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ABSTRACT

This curriculum guide contains learning objectives, activities, and resource and reference materials to help elementary and secondary teachers develop a legal education curriculum unit. Learning objectives are related to nine major topics: (1) Why the Law, (2) How the Law Develops, (3) How the Law Works, (4) The Court System, (5) Major Supreme Court Decisions and Their Impact on U.S. History, (6) The Philosophy and Procedures of the Juvenile Court, (7) Due Process of Law, (8) The Bill of Rights in Criminal Cases, and (9) The Bill of Rights and Individual Civil Liberties. The guide is divided into three sections. The first section lists the educational objectives for teaching rights and responsibilities of citizenship in a free society. The second section presents 218 activities for teaching a legal education unit. Two matrices show how the individual activities relate to the specific learning objectives. The third section, an appendix, contains reference material for the teacher, including a bibliography of resources, topical outlines, and answers to commonly asked questions about the law. (JR)

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A Curriculum Guide
for
Kindergarten through Grade 12
Revised Edition

Developed by

The Missouri Bar
Advisory Committee on
Citizenship Education
(A.C.C.E.)

and

The Missouri Department
of Elementary and Secondary
Education

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PREFACE

It matters not how grandiose and eloquent a curriculum guide may be, unless a trained and dedicated teacher puts the suggestions and materials into play with unmitigated vigor and enthusiasm. The final presentation of any subject, and its resulting success, depends very much on the personality, the vivacity, indeed the bouyancy, of the presentor. Conversely, any unit of work, no matter how sublime, may well fall flat if these tools are not put to work.

Those who have put together this guide are entirely cognizant of the above facts, and therefore emphasize that the many activities are placed in the guide as suggestions and, hopefully, outstanding examples of material which may be used, or not, in accordance with the teacher's discretion. *Thus, as with any unit of study, the teacher is encouraged, within the realm of fact and practicability, to eliminate, complement, and supplement these materials in a manner which will give additional impact to the subject.*

The Missouri Bar and Missouri Department of Elementary and Secondary Education plans to update and revise the unit periodically, and it is suggested that each teacher make a concerted effort to make his own revisions, particularly in the way of bibliographies of texts, pamphlets, films, and the like.

The Missouri Bar and Missouri Department of Elementary and Secondary Education are anxious to be of assistance in any manner that will make the use of this guide a success. Please feel to contact either organization with suggestions concerning the Guide. We are especially appreciative of any ideas you have to offer that would help us expand the guide by adding new activities relevant to a variety of age groups and subject areas. We welcome your thoughts.

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Members of The Missouri Bar are pleased to be working with educators in this effort to improve understanding of our laws, our courts and our legal systems. Lawyers, better than others perhaps, understand the challenge which teachers face daily in attempting to answer student questions concerning the effectiveness of our legal system in solving the many problems of our rapidly changing society. As lawyers, we feel an obligation to assist teachers in providing satisfactory answers to these questions.

For this reason, The Missouri Bar established the Advisory Committee on Citizenship Education. The purpose was to provide a means by which educators and lawyers could join efforts in seeking to improve public understanding of the legal system, the courts and the role of law in a free society. It is the belief of The Missouri Bar that such an understanding is necessary for a person to fully enjoy the rights and to adequately fulfill the responsibilities of citizenship.

We are pleased at the progress this committee has made. This guide, the teachers' in-service training course, a film library, and, perhaps most importantly, the spirit of cooperation which has developed are just a few of the tangible signs of the progress that has been made and of the work that has been done. Many dedicated teachers, educators and lawyers have unselfishly provided their time and talents to this cause. Members of The Missouri Bar look forward to a continuing effort with the educators through this program.

We have made a good start. However, much remains to be done. By joining our efforts, by combining our talents and by continuing our dedication, the members of our two professions can and will make a rewarding contribution to the improvement of our society through this program.

Thomas D. Cochran
President of Missouri Bar

Law is a pervasive force affecting each man, woman and child in almost every action from birth to death. Yet, in spite of this involvement, our legal system is only vaguely understood and little appreciated by the general public. Many consider the law to be merely a restrictive force, typified by our criminal laws. Others view the law with suspicion, distrusting it because they do not understand it. Almost everyone fails to fully appreciate the important role that law plays as a positive force in our society.

This lack of understanding is a problem that involves both teachers and lawyers. Teachers, in most cases, are not prepared to answer the legitimate, though often hostile, questions which students ask concerning the law and the legal system. Lawyers, on the other hand, are too often accused of self-interest when they attempt to explain the legal system or offer suggestions for its improvement.

Working together through The Missouri Bar Advisory Committee on Citizenship Education, educators and lawyers are seeking to solve this problem through emphasis in our educational system on the role of law in a free society.

This guide is one of the materials developed in this project. Its purpose is to provide assistance to the teacher in explaining in relevant terms how the law makes it possible for each of us to enjoy the greatest amount of individual freedom, while at the same time providing the means by which society can function in a peaceful and orderly manner. To further assist teachers in this task, local bar associations have pledged their cooperation. Therefore, when teachers feel the need of assistance from lawyers in explaining the law or the legal system, they should feel free to contact the president of their local bar association or The Missouri Bar. The lawyers of Missouri will do their best to assist teachers in demonstrating to students the important role that law and the legal system plays in their everday life.

E. A. Richter
Administrator of A.C.C.E.

This Curriculum Guide for use by teachers in the Elementary and Secondary Schools of Missouri represents the cooperative efforts of many individuals. The Guides make available to teachers materials and suggestions which have been developed over approximately a seven year period in a project conducted by the Missouri Bar Advisory Committee on Citizenship Education under the general title of The Rights and Responsibilities of Citizenship in a Free Society. This is a joint committee of lawyers and educators working under the direction of the Missouri Bar and the State Department of Elementary and Secondary Education, with the full cooperation of the University of Missouri.

The project represents a cooperative attempt by the legal and the education professions to join hands in developing an education program for promoting a better understanding and appreciation of the law so that it will have significant meaning in the lives of young people. The need for this does not need to be documented, for lack of understanding and respect for the law on the part of many individuals in our society is well known. The development of understanding, however, must go beyond the memorization of factual material and theoretical concepts.

Lawyers and educators in cooperation decided on the content material to be utilized in the project. The substantive portion of the content was organized and presented by lawyers with participation of educators. The adaptation of the material to school use and the development of appropriate methodology were directed by educators with lawyers participating.

The materials have been field tested in the schools on various levels. They have been organized into Curriculum Guide form through the leadership of the State Department of Elementary and Secondary Education with the cooperation of individuals who participated in the development and testing of the materials from the beginning. Throughout its many developmental phases, this project has been characterized by genuine interest on the part of many people and unfailingly generous cooperation. It is anticipated that this Curriculum Guide will prove to be useful in developing still further this unique project in cooperation.

Loran G. Townsend
Special Consultant to the Committee

The rights and responsibilities of citizens in a free society are receiving attention locally, on a statewide basis, and nationally. With the voting age lowered to 18 years, individuals acquire voting responsibilities soon after termination of secondary education programs or while in high school. That schools have great influence over students' understandings of and attitudes toward our legal system is recognized by all, especially school personnel and the legal profession.

Citizenship Education cannot wait until a student reaches junior or senior high school. To help youth learn principles of good citizenship, situations and problems related to everday living should be utilized to teach an understanding of the need for laws as well as the rights and responsibilities of citizenship in a democratic society. The opportunities to teach principles of good citizenship are as prevalent in kindergarten as in the senior year of secondary school. With this concept in mind, The Missouri Bar and the State Department of Elementary and Secondary Education have prepared this comprehensive curriculum guide for Citizenship Education. This is an excellent example of professional groups cooperatively planning an educational program for youth.

It is the hope of all agencies that educators and lawyers working together may enrich the Citizenship Education program to provide additional learning experiences for the youth of Missouri which will be conducive to development of an understanding of legal principles, an appreciation of the rights and responsibilities of citizenship, and a commitment to a system of government based on laws.

Arthur L. Mallory
Commissioner of Education

ACKNOWLEDGEMENTS

Any attempt to extend thanks to the many teachers and lawyers who contributed to the production of this curriculum guide is bound to be incomplete. Countless hours of work were contributed by so many persons that it is impossible to name them all individually. Therefore, we herewith extend to each of them our heartfelt thanks for their dedication to this task and their contribution to this product.

At the same time, well recognizing the danger of omitting some who should be named, we feel compelled to give recognition, by name, to the members of that small committee which labored long and hard to bring forth this publication in its final form. To these individuals, listed below, we extend our sincere thanks.

Clarice Barr
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We also must give recognition to those individuals who edited this guide: To R. Scott Smith, Esq., who assembled the outline of content that appears in the Appendix; to Keith Birkes, Esq., who assumed primary responsibility for final editing of the substantive material in the Appendix; and to Dr. Warren Solomon, who assumed primary responsibility for editing the objectives and activities that appear in this guide.

Recognition should also be given to Dr. Carl Fehrle and Dr. John McCarthy from the University of Missouri-Columbia, without whose hard work the course "Teaching Legal Rights and Responsibilities of Citizenship in a Free Society" could not have been taught to over 3,000 Missouri teachers. It was as a result of this course that many teachers thought of ideas for activities, a good number of which are included in this guide. Special recognition should also be given to the many Missouri attorneys who contributed ideas that now appear in the resource outline that may be found in the Appendix.

Finally, we wish to acknowledge the Danforth Foundation and the Missouri Council for Criminal Justice, without whose financial assistance this guide could not have been produced.

INTRODUCTION

In the past decade there has been increasing recognition of the need for more emphasis on the role of law in society in United States schools. Both teachers and lawyers have recognized this need and have, in several instances, joined forces in seeking a solution to this problem. In Missouri, such a program is being conducted by the Missouri Bar Advisory Committee on Citizenship Education, a joint committee of lawyers and educators working under the direction of The Missouri Bar and the Missouri Department of Elementary and Secondary Education.

The basic content of Missouri's program combines general understanding of the law and its role in society with a practical understanding of how law works in the daily lives of citizens. The content is broad enough that it can be used in a variety of subject areas from kindergarten through high school.

The main topics of the program include:

1. Why the Law
2. How the Law Develops
3. How the Law Works
4. The Court System
5. Major Supreme Court Decisions and Their Impact on U.S. History
6. The Philosophy and Procedures of the Juvenile Court
7. Due Process of Law
8. The Bill of Rights in Criminal Cases
9. The Bill of Rights and Individual Civil Liberties

Over twenty-five hundred Missouri teachers have completed courses dealing with the above topics, which were developed through joint efforts of The Missouri Bar, The Missouri Department of Elementary and Secondary Education, and a few of Missouri's universities. The University of Missouri-Columbia's Office of Continuing Professional Education was particularly active in the effort of reaching teachers to strengthen their understanding of the role of law and their ideas about how to teach law-related content.

In 1973, two curriculum guides were developed by the project, one for elementary teachers, the other for secondary teachers. Both guides were developed before many teachers became involved in the program. This guide differs from the previous guides in many ways. The most basic way is that this guide is based upon the thinking of a large number of elementary and secondary school educators who have participated in Missouri's law-focused education program. Many activities listed in this guide were actually used in Missouri schools and classrooms.

In the summer of 1975 a curriculum committee met in Jefferson City to discuss the format, objectives, and activities to go in the guide. Members of the committee not only contributed their own ideas, but in most cases they collected ideas from fellow teachers for this guide.

The guide uses a loose-leaf format so that it could be readily supplemented in the future using ideas from the program and ideas that teachers using the guide have collected from other sources.

The guide has these basic sections:

1. A list of objectives for teaching the rights and responsibilities of citizenship in a free society.

2. A list of activities that could be used to accomplish the above-mentioned objectives. The activities are cross-referenced with the objectives.

3. An appendix, which contains reference material for the teacher.

This guide may be used in many ways. We advise the reader first to skim through the entire book and note the major sections. It is particularly important to examine Tables 1, 2, and 3 to see how the activities are related to specific objectives and subject matter areas. When using this guide as a resource to plan for instruction, we suggest that teachers first select those objectives that they would like students to accomplish and that they next examine the activities related to their high priority objectives to decide which ones, if any in this guide, should be adapted and used for instruction. Sources cited in the bibliography may be consulted for further ideas on instructional materials and activities.

Since the guide will be updated and supplemented on a regular basis, we urge teachers to continue to be generous with their ideas by sending proposals for new activities to Dr. Warren Solomon, Missouri Department of Elementary and Secondary Education, P. O. Box 480, Jefferson City, MO 65101, who is editor of the objectives and activities portion of the guide. Whatever merit this guide has may be attributed to the creative thinking and alertness of those educators and lawyers who have shared of their time and good thinking.

OBJECTIVES
FOR TEACHING
RIGHTS AND RESPONSIBILITIES
OF CITIZENSHIP IN A FREE SOCIETY

The objectives of the program fit into two categories: each objective of one category relates to one of the program's nine basic topics. The objectives in the other category, however, relate either to two or more of the program's topics or relate more generally to the total program. The latter category of objectives, which is called "Overarching Objectives," is the first to be listed on the next page.

OVERARCHING OBJECTIVES

Attitude Toward Law-Related Content and The Role of Law and the Rights and Responsibilities of Citizenship

0.1. The students should find the topic of law and rights and responsibilities of citizenship one that concerns them, as shown by their active participation in law-related learning activities.

Awareness and Knowledge About Law-Related Issues

0.2. Students should be well informed regarding the complex issues of this society.

0.3. Students should be able to describe issues growing out of the complexities of this society that pose dilemmas, which may ultimately be dealt with by legislatures or the court system.

0.4. Students should be able to list and defend arguments for and against given actions, rules, or laws.

Student Inquiry Skills

0.5. Students should develop investigative strategies using observations, interviews with attorneys, readings, and other productive methods of investigation to achieve a deeper understanding of issues related to the law, the adversary system, and the rights and responsibilities of citizenship.

0.6. Students, when presented with issues and dilemma situations, should engage in productive discussion and problem-solving strategies, reach their own conclusions, defend their own positions, and consider thoughtfully modifying them when presented with the ideas of others.

0.7. Students, when discussing real or hypothetical cases, will be able to identify facts, recognize legal issues, and articulate arguments based on law and fundamental human values.

Student Values and Their Clarification

0.8. Students should be able to recognize and explain instances in which conflicts were resolved in a manner that was unfair to one or more of the parties involved.

0.9. Students should value fairness and strive to resolve disputes in a fair manner.

0.10. Students should be able to articulate and clarify views on issues of personal importance when discussing a real or hypothetical case.

0.11. Students will strive to develop value systems directed toward resolving present and future problems based upon assessing past and present experiences of man.

0.12. Students should strive to organize and assess their own value systems making an effort to have their judgment consistently based on reasoned positions which consider fully past decisions, alternatives, and consequences.

Student Responsibility

0.13. Students should feel that they are able to influence some of the decisions that affect them.

0.14. Students in the classroom, school, and community should feel free to exercise their rights and feel a desire to assume responsibility, to be well informed about civic affairs, to protect rights of citizens, and to act constructively for the betterment of society.

OBJECTIVES RELATED TO THE NINE BASIC TOPICS

I. WHY THE LAW

Objectives and activities pertinent to this topic should help students expand and clarify their conceptions of rules and laws. The objectives below are only a sample of the possibilities. In addition, the teacher will need to reword the objectives to make them more appropriate for his or her own class.

1.1 Students should be able to list and explain rules of their home, rules of their classroom, and/or some of the major laws of their community, state, and nation.

1.2 Students should be able to explain why rules appropriate for certain groups, times, and places, are not necessarily appropriate for the other groups, times, and places.

1.3 Students should be able to provide reasons why certain specific rules or laws are needed.

1.4 Students should be able to determine whether a particular rule or law and its consequences is consistent with its purpose and whether it may create more serious problems.

1.5 Students should be able to propose acts, rules, or laws that would help resolve a particular problem or set of problems.

1.6 Students should be able to show what would happen if (a) a given law or rule were abolished or not enforced or (b) if all laws were abolished or not enforced.

1.7 Students should be able to specify how human relationships, such as those between husband and wife, parent and child, student and teacher, buyer and seller, citizen and government, citizen and police officer, and employer and employee, have been affected by law.

1.8 Students should be able to define the term "law" and provide clear illustrations to support their definitions.

II. HOW THE LAW DEVELOPS

Objectives and activities pertinent to this topic should help students expand and clarify their understanding of how laws have changed over time and of the processes by which laws are changed. Such understandings, which begin in the home and school, should grow throughout a person's life, especially when that person becomes involved in the processes of changing law.

2.1 Students should be able to compare "rules" with "laws."

2.2 Students should be able to explain how rules or laws are (or should be) made in the home, at school, among peers, and in the community, state, and nation.

2.3 Students should be able to compare the processes by which rules or laws for various social or political units are made in this state or nation with the procedures used in other states or nations.

2.4 Students should recognize and explain beliefs and values basic to American government and jurisprudence that underlie law-making processes in the United States, such as those noted in the Declaration of Independence and Preamble to the Constitution.

2.5 Students should be able to predict how another political system would make laws, when given information on the basic beliefs and values underlying that system.

2.6 Students should be able to evaluate the law-making processes in the community, state, and nation using criteria consistent with the basic principles underlying the U.S. legal system.

2.7 Students should be able to indicate the appropriate groups and processes involved in making a given law, ruling, or regulation.

2.8 Students should be able to explain and illustrate the roles the following groups play in making, changing, and enforcing law: legislative branches, executive branches, judicial branches, administrative bodies, private groups, and individual citizens.

2.9 Students should be able to describe changes that have occurred in particular areas of law.

2.10 Students should be able to give examples of rules or laws from the past that are no longer needed today as well as rules or laws in the present that were unnecessary in the past.

2.11 Students, when given a specific state of affairs, a rule, or a law that an individual or group may wish to change, should be able to propose appropriate, effective, lawful procedures that could be used to effect the change.

2.12 Students should be able to predict consequences that would result from changes in the law-making processes of the community, state, and nation.

2.13 Students should be able to explain how the United States political-legal system balances conflicting interests as it makes, interprets, and applies laws.

2.14 Students should be able to explain the importance of personal flexibility in a society whose laws and social conditions are changing.

III. HOW THE LAW WORKS

Objectives and activities pertinent to this topic should relate to the concept of the adversary system, its assumptions, the roles various people take in it, and its procedures in both civil and criminal cases.

3.1 Students should be able to describe a complex dispute between two parties and suggest procedures to resolve the dispute in a manner fair to all parties.

3.2 Students should be able to use correctly terms that are associated with the functioning of the legal system, such as "judge," "jury," "preliminary hearing," "trial," "sentencing," "prosecuting attorney," "defense attorney," and "lawsuit."

3.3 Students should be able to explain how, in theory, the adversary system should result in just decisions, as well as how, in practice, certain conditions prevent it from achieving the ideal of justice.

3.4 Students should be able to identify procedures inconsistent with the adversary system approach.

3.5 Students should be able to distinguish civil from criminal cases.

3.6 Students should be able to list and compare the basic assumptions and procedures used in civil cases and in criminal cases.

3.7 Students should be able to explain how individuals and groups are working to modify the adversary system.

3.8 Students should be able to present and defend modifications of the adversary system.

3.9 Students should be able to assume the roles of judge, attorneys, jury, witnesses, defendant, and others in a mock trial held in the classroom.

3.10 Students should be able to compare how disputes are resolved and trials conducted in other countries with those procedures used in the United States.

3.11 Students should be able to describe situations in which individuals would need the services of an attorney and should be able to explain how they could obtain legal services.

3.12 Students should be able to assess the roles and responsibilities of citizens in the judicial process (e.g., serving as witness or juror).

IV. THE COURT SYSTEM

This topic pertains most closely to the concepts "jurisdiction" and "appeals." The objectives and activities related to this topic pertain to those two concepts and to the organization of state and federal courts.

4.1 Students should be able to describe who has jurisdiction over disputes they have at home or school.

4.2 Students should be able to identify and describe the various state and federal courts, their procedures, responsibilities, and the personnel attached to them.

4.3 Students should be able to describe which courts and levels of government have jurisdiction over particular legal disputes.

4.4 Students should be able to chart the organization of the Missouri and United States court systems.

4.5 Students should be able to explain the concept of "appeals" as it is used in our court system — its purposes.

4.6 Students should be able to describe some of the processes by which an appeal is initiated and the channels through which it may be carried before a final decision is reached.

4.7 Students should be able to describe the benefits and problems related to the current appeals system.

4.8 Students should be able to identify and discuss some of the problems in our present court system.

4.9 Students should be able to identify and discuss alternatives for modifying present court systems and procedures to alleviate the problems.

V. MAJOR SUPREME COURT DECISIONS

Objectives and activities pertinent to this topic should relate to the role of the Supreme Court in the court system and in American society.

5.1 Students should be able to give examples of "highest court of appeals" in their lives. (For practical purposes, the highest court of appeals *in school* from a first grader's perspective is probably the principal.)

5.2 Students should be able to explain the procedures, functions, and the jurisdiction of the United States Supreme Court.

5.3 Students should be able to compare the United States Supreme Court with the Supreme Court of Missouri.

5.4 Students should be able to compare the United States Supreme Court with other federal courts.

5.5 Students should be able to identify certain United States Supreme Court decisions which have been important because of their effect upon people's lives; explain what issues were dealt with, what decisions were made, the rationales for the decisions, and the significance of the decisions.

5.6 Students should be able to describe institutions of other countries that resemble by function the United States Supreme Court and compare those institutions with the United States Supreme Court.

5.7 Students should be able to predict what consequences might result if the Supreme Court were abolished (or if it had never been established by the Constitution).

5.8 Students should be able to describe Supreme Court decisions related to the subject matter of the particular course (history, science, family living, English, government, business, etc.).

VI. THE JUVENILE COURT

Objectives and activities pertinent to this topic relate to the philosophy, purpose, and procedures of Missouri juvenile courts.

6.1 Students should be able to contrast the philosophies, jurisdiction, and procedures of Missouri juvenile courts with those of adult courts.

6.2 Students should be able to contrast the rights of juveniles with those of adults.

6.3 Students should be able to explain, illustrate in drawings, or role play the procedures by which various hypothetical juvenile cases are handled in juvenile courts.

6.4 Students should be aware of the major organizations and programs giving supportive kinds of assistance to children in trouble, whether from neglect or delinquency.

VII. DUE PROCESS OF LAW

The objectives and activities pertaining to this topic relate to the development and meaning of the concept "due process of law."

7.1 Students should be able to explain in their own way what "due process of law" means.

7.2 Students should be able to distinguish "substantive" from "procedural" due process of law.

7.3 Students should be able to describe the implications of due process of law in specific real or hypothetical cases.

7.4 Students should be able to identify and explain certain milestones in the historical development of due process of law (e.g., the Magna Carta, the Bill of Rights, Amendment XIV, and many others).

7.5 Students should be able to examine the status of due process in other societies or in the United States in its past, and compare it with due process in the United States today.

7.6 Students should be able to describe real or hypothetical situations in which the exact implications of "due process" are unclear.

7.7 Students should be able to take and defend a position on what due process of law should mean in situations in which courts have yet to make a definitive ruling, *or* students should be able to take and defend a position for or against a court's ruling on what due process of law means.

7.8 Students should be able to identify and explain those parts of the Constitution that pertain most closely to due process of law.

VIII. THE BILL OF RIGHTS IN CRIMINAL CASES

The objectives and activities pertaining to this topic relate the basic protections of the Bill of Rights and the basic philosophy of criminal law.

8.1 Students should be able to define "crime" in their own words and to distinguish crime from other antisocial acts.

8.2 Students should be able to differentiate felonies from misdemeanors.

8.3 Students should be able to describe the role of criminal law in society.

8.4 Students should be able to describe certain limitations on the power to enact criminal legislation (e.g. the need for notice and fair warning, prohibition or punishment of a person because of his status rather than his actions, etc.).

8.5 Students should be able to identify and explain procedural safeguards for the accused (procedural due process), e.g., the right to be formally charged of a crime, freedom from double jeopardy, right to confront witnesses, right to a speedy and public trial, and right to a trial by jury.

8.6 Students should be able to point out how certain rights were protected or violated in real or hypothetical cases.

8.7 Students should be able to explain why crimes are committed, propose and examine alternative suggestions for reducing crime, and prepare a position on how crime may be reduced in a manner that does not destroy basic rights of the accused.

8.8 Students should be able to predict consequences of specific laws being passed to reduce crime and to argue for or against the laws.

8.9 Students should be able to show the implications of abolishing all criminal laws.

8.10 Students should be able to show the implications of abolishing due process safeguards.

8.11 Students should be prepared to discuss in the current controversies related to criminal law, the major issues, and their complexities.

8.12 Students should be able to discuss how criminals have been dealt with in this and other communities, states, and nations in an effort to develop their own thinking on the correctional system.

IX. THE BILL OF RIGHTS AND INDIVIDUAL CIVIL LIBERTIES

The objectives and activities pertaining to this topic relate to the broad area of rights and responsibilities of citizenship in American society.

9.1 Students should be able to specify and explain basic rights enumerated in or implied by the Constitution.

9.2 Students should be able to provide examples of life in another place where citizens do not have rights available to American citizens.

9.3 Students should be able to illustrate consequences of citizens not carrying out their responsibilities.

9.4 Students should be able to identify instances where two rights conflict and where an individual's rights conflict with the valid interests of society.

9.5 Students should be able to identify the conflicting rights in disputes and in some instances feel emotionally caught in a dilemma where they must choose between two rights, each of which they cherish.

9.6 Students should be able to explain what they consider and what the courts have held to be responsibilities that accompany and support the rights of citizenship in a free society.

9.7 Students should be able to investigate and analyze questions pertaining to the rights and responsibilities of citizenship in other times and places and indicate how the inquiry affected their own views of contemporary American rights and responsibilities.

ACTIVITIES
FOR TEACHING
THE RIGHTS AND RESPONSIBILITIES
OF CITIZENSHIP IN A FREE SOCIETY

The two hundred plus activities in this section are listed in a random order. They all relate to one or more of the program's objectives, as is indicated by Tables I and II that follow on the next few pages. They also relate to many subject matter areas, as is indicated by Table III. How activities are shown to relate to objectives and courses, as specified here, is only suggestive of what seems to the editors to be possibilities. Readers may, of course, see relationships between objectives, activities, and subject areas different from what is specified here. The main thing is that the teacher understand the objectives, make decisions as to priorities, and select and adapt activity suggestions presented here to meet the instructional needs of that teacher's classroom.

TABLE I

HOW ACTIVITIES RELATE TO THE SPECIFIC OBJECTIVES — AN INDEX FOR ELEMENTARY TEACHERS

Objectives	Activities That May Be Used to Help Accomplish the Objectives
	Overarching Objectives
0.1	All of the activities may be used to accomplish this objective provided that they are well planned, taught at an appropriate level of difficulty, and taught with enthusiasm.
0.2	18, 25, 52, 53, 54, 66, 94, 98, 99, 112, 131, 152, 156, 159, 180, 182, 192, 193, 200, 213
0.3	18, 23, 27, 44, 52, 53, 54, 57, 66, 70, 94, 112, 152, 156, 180, 191, 193, 200, 212, 213
0.4	3, 6, 11, 17, 37, 39, 41, 44, 51, 52, 53, 54, 62, 66, 67, 93, 96, 99, 137, 150, 152, 156, 159, 180, 191, 192, 194, 200, 212, 218
0.5	1, 3, 4, 18, 23, 25, 26, 33, 35, 37, 44, 48, 49, 52, 53, 54, 66, 70, 79, 81, 94, 95, 99, 108, 112, 152, 156, 159, 178, 180, 182, 191, 193, 198, 200, 212, 213.
0.6	8, 44, 54, 137, 149, 150, 152, 159, 170, 180, 182, 191, 192, 193, 198, 200, 212.
0.7	8, 26, 44, 45, 54, 79, 149, 170, 191, 212
0.8	5, 12, 32, 44, 69, 96, 137, 145, 150, 152, 160, 169, 170, 178, 194
0.9	5, 8, 12, 25, 32, 44, 59, 62, 69, 70, 93, 96, 137, 145, 149, 150, 152, 160, 161, 169, 170, 178, 194
0.10	5, 6, 7, 8, 11, 12, 25, 29, 32, 33, 54, 62, 69, 93, 96, 137, 150, 152, 160, 161, 170, 182, 191, 192, 194, 200
0.11	44, 52, 67, 99, 112, 150, 152, 156, 160, 170, 191, 192, 193, 200
0.12	25, 28, 52, 67, 160, 170, 191, 193, 194, 200
0.13	12, 36, 39, 51, 54, 62, 78, 86, 94, 105, 106, 107, 145, 170, 192, 193, 207
0.14	12, 15, 17, 36, 39, 49, 51, 54, 57, 62, 73, 76, 77, 78, 81, 82, 83, 86, 105, 106, 107, 108, 110, 111, 112, 127, 131, 152, 165, 170, 176, 182, 192, 198, 200, 202, 207

Objectives	Activities That May Be Used to Help Accomplish the Objectives
	Objectives Related to the Nine Basic Topics **I. Why the Law**
1.1	2, 3, 11, 21, 23, 27, 34, 37, 38, 39, 44, 51, 52, 53, 54, 57, 62, 63, 64, 65, 67, 70, 73, 74, 75, 76, 81, 83, 94, 98, 99, 102, 105, 106, 107, 109, 115, 127, 131, 147, 149, 150, 153, 154, 156, 159, 163, 167, 170, 180, 182, 191, 192, 193, 194, 198, 200, 202, 207, 213, 218
1.2	5, 15, 23, 27, 41, 53, 76, 115, 170, 194
1.3	2, 3, 7, 9, 11, 16, 17, 23, 25, 27, 34, 37, 39, 41, 44, 51, 52, 54, 57, 59, 62, 63, 64, 65, 66, 67, 69, 73, 74, 75, 76, 81, 82, 83, 84, 86, 88, 90, 91, 93, 95, 96, 99, 102, 105, 106, 107, 112, 115, 120, 127, 131, 145, 147, 149, 150, 153, 156, 159, 160, 161, 169, 170, 180, 182, 183, 191, 192, 193, 194, 198, 200, 202, 207, 212, 213, 218
1.4	6, 44, 51, 52, 53, 54, 62, 75, 99, 145, 150, 152, 156, 159, 170, 182, 191, 192, 194, 218
1.5	5, 8, 12, 17, 18, 44, 51, 52, 53, 54, 62, 64, 75, 83, 86, 91, 101, 106, 112, 145, 150, 152, 156, 170, 191, 192, 193, 194, 218
1.6	2, 3, 4, 11, 17, 21, 24, 27, 29, 34, 37, 39, 41, 44, 51, 52, 53, 54, 62, 63, 64, 66, 69, 73, 74, 75, 76, 81, 82, 83, 84, 86, 88, 90, 91, 95, 96, 99, 102, 105, 106, 115, 120, 127, 145, 150, 153, 156, 159, 160, 161, 170, 180, 182, 183, 191, 194, 198, 200, 202, 207, 213, 218
1.7	2, 18, 23, 25, 27, 29, 44, 52, 53, 54, 64, 74, 75, 76, 93, 94, 95, 98, 99, 105, 115, 150, 153, 154, 156, 159, 163, 167, 169, 170, 180, 182, 191, 192, 194, 200, 202, 212, 213, 218
1.8	2, 27, 40, 63
	II. How the Law Develops
2.1	27, 202
2.2	1, 5, 12, 34, 44, 49, 51, 66, 96, 99, 115, 150, 154, 170, 192, 212
2.3	115, 163
2.4	59, 147, 194, 213
2.5	
2.6	152, 170

Objectives	Activities That May Be Used to Help Accomplish the Objectives
2.7	1, 44, 49, 94, 98, 163
2.8	1, 4, 29, 35, 40, 44, 49, 81, 82, 94, 96, 98, 108, 109, 110, 120, 131, 163, 213
2.9	49, 94, 98, 99, 159, 163, 167, 179
2.10	3, 23, 44, 99, 167, 179
2.11	44, 49, 62, 66, 94, 152, 163, 170, 178, 180, 182, 192, 193
2.12	59, 170
2.13	44, 49, 94, 152, 212
2.14	23
	III. How the Law Works
3.1	5, 8, 15, 44, 49, 57, 96, 149, 152, 170
3.2	1, 2, 8, 40, 46, 57, 94, 95, 99, 110, 149, 152, 163
3.3	79, 94, 95, 149, 152, 212
3.4	149, 152
3.5	26, 95, 99, 149, 163
3.6	49, 94, 95
3.7	94
3.8	
3.9	57, 149
3.10	
3.11	2, 8, 49, 94, 95, 212, 213
3.12	79, 94, 95, 149
	IV. The Court System
4.1	44, 170

Objectives	Activities That May Be Used to Help Accomplish the Objectives
4.2	1, 48, 94, 95, 99, 110, 163
4.3	2, 35, 40, 44, 48, 95, 99, 108, 163, 212, 213
4.4	46
4.5	48, 79, 94, 95, 152, 212
4.6	48, 94, 95
4.7	
4.8	
4.9	
	V. Major Supreme Court Decisions
5.1	170
5.2	1, 94
5.3	94
5.4	94
5.5	79, 94, 99, 163, 178, 193
5.6	
5.7	
5.8	
	VI. The Juvenile Court
6.1	2, 94, 163, 194, 213
6.2	2, 94, 163, 194, 213
6.3	25, 94, 213
6.4	25, 94, 99, 150, 163, 213
	VII. Due Process of Law
7.1	2, 152, 170, 212, 213

Objectives	Activities That May Be Used to Help Accomplish the Objectives
7.2	44, 99
7.3	44, 59, 170, 212, 213
7.4	59, 99, 152, 163
7.5	59
7.6	94
7.7	152
7.8	
	VIII. The Bill of Rights in Criminal Cases
8.1	
8.2	2, 99
8.3	62, 63, 67, 73, 76, 81, 84, 94, 95
8.4	7, 99, 163
8.5	4, 94, 95, 99, 100, 163, 200, 213
8.6	95
8.7	9, 94
8.8	94
8.9	4, 62, 63, 65, 73, 76, 81, 84
8.10	4
8.11	94
8.12	94
	IX. The Bill of Rights and Individual Civil Liberties
9.1	2, 28, 38, 94, 99, 163, 178, 193, 200
9.2	59
9.3	12, 66, 73, 76, 77, 78, 82, 83, 84, 86, 107, 111, 112, 127, 131, 150, 152, 160, 165, 170, 180, 182, 193, 194, 198, 200, 202

Objectives	Activities That May Be Used to Help Accomplish the Objectives
9.4	44, 52, 66, 91, 94, 99, 152, 160, 170, 182, 191, 193, 194, 212
9.5	44, 52, 54, 66, 91, 99, 152, 160, 170, 182, 191, 194, 212
9.6	28, 36, 52, 54, 62, 63, 77, 96, 160, 193, 202
9.7	59

TABLE II
HOW ACTIVITIES RELATE TO THE SPECIFIC OBJECTIVES — AN INDEX FOR SECONDARY TEACHERS

Objectives	Activities That May Be Used to Help Accomplish The Objectives
	Overarching Objectives
0.1	All of the activities may be used to accomplish this objective provided that they are well planned, taught at an appropriate level of difficulty, and taught with enthusiasm.
0.2	10,13,14,18,20, 22, 25, 45, 47, 50, 52, 53, 54, 56, 58, 66, 68, 71, 72, 94, 98, 99, 104, 114, 117, 119, 122, 123, 124, 125, 129, 130, 131, 132, 134, 135, 140, 141, 142, 143, 144, 146, 151, 152, 156, 157, 158, 159, 164, 166, 168, 171, 174, 180, 181, 182, 185, 187, 188, 189, 192, 193, 199, 200, 201, 203, 204, 205, 211, 213, 217
0.3	10, 13, 14, 18, 20, 22, 23, 43, 45, 50, 52, 53, 54, 56, 58, 66, 70, 72, 80, 85, 94, 114, 122, 129, 130, 132, 134, 143, 144, 151, 152, 156, 157, 158, 166, 174, 180, 181, 185, 187, 188, 189, 191, 193, 195, 199, 200, 203, 204, 205, 208, 211, 212, 213, 215, 216, 217
0.4	3, 10, 17, 20, 22, 39, 41, 43, 45, 51, 52, 53, 54, 56, 62, 66, 67, 68, 71, 72, 93, 99, 104, 119, 122, 123, 129, 130, 132, 133, 134, 140, 141, 142, 144, 150, 151, 152, 156, 157, 159, 174, 180, 181, 184, 185, 187, 188, 189, 191, 192, 194, 197, 199, 200, 203, 204, 205, 209, 211, 212, 216, 217, 218
0.5	1, 3, 4, 10, 14, 18, 20, 22, 23, 25, 26, 31, 33, 35, 42, 43, 45, 47, 48, 49, 52, 53, 54, 56, 58, 60, 66, 68, 70, 71, 72, 79, 80, 85, 94, 95, 99, 100, 116, 117, 119, 122, 124, 125, 126, 128, 129, 130, 132, 133, 134, 135, 136, 138, 139, 140, 141, 142, 143, 144, 146, 148, 151, 152, 156, 157, 158, 159, 164, 166, 168, 171, 172, 173, 174, 175, 178, 180, 181, 182, 184, 186, 187, 188, 189, 190, 191, 193, 195, 196, 197, 199, 200, 201, 203, 204, 205, 206, 208, 211, 212, 213, 217
0.6	8,10, 19, 22, 45, 54, 56, 68, 71, 85, 104, 119, 122, 130, 132, 140, 141, 142, 143, 144, 149, 150, 151, 152, 155, 157, 159, 170, 174, 180, 181, 182, 185, 187, 188, 189, 191, 192, 193, 195, 197, 199, 200, 203, 204, 205, 209, 210, 211, 212, 214, 215, 216, 217
0.7	8, 10, 19, 20, 22, 26, 54, 56, 71, 79, 85, 104, 114, 116, 119, 122, 132, 141, 142, 144, 149, 155, 170, 185, 191, 195, 197, 199, 210, 211, 212, 214, 216, 217
0.8	14, 20, 31, 32, 45, 69, 72, 85, 122, 134, 135, 136, 141, 150, 151, 152, 160, 170, 175, 178, 181, 185, 188, 189, 194, 195, 203, 209, 217
0.9	8, 14, 20, 25, 32, 45, 59, 62, 69, 70, 72, 85, 93, 119, 122, 132, 134, 135, 136, 141, 142, 149, 150, 151, 152, 155, 160, 161, 170, 172, 175, 178, 181, 185, 187, 188, 189, 194, 209, 215, 217

Objectives	Activities That May Be Used to Help Accomplish the Objectives
0.10	8, 19, 22, 25, 29, 32, 33, 45, 54, 62, 68, 69, 93, 122, 132, 134, 141, 142, 144, 150, 151, 152, 160, 161, 170, 181, 182, 187, 189, 192, 194, 197, 200, 209, 216, 217
0.11	20, 22, 45, 52, 67, 85, 99, 104, 122, 132, 134, 141, 144, 150, 151, 152, 156, 160, 170, 181, 185, 187, 189, 192, 193, 195, 200, 215, 217
0.12	10, 19, 22, 25, 45, 52, 67, 104, 122, 132, 134, 141, 144, 151, 160, 170, 181, 185, 187, 189, 193, 194, 197, 200, 209, 215, 217
0.13	13, 39, 51, 54, 62, 94, 122, 123, 124, 125, 132, 133, 170, 192, 193, 207
0.14	13, 15, 17, 19, 20, 22, 39, 49, 50, 51, 54, 62, 68, 73, 122, 123, 124, 125, 127, 129, 130, 131, 132, 148, 151, 160, 170, 182, 189, 190, 192, 193, 200, 202, 204, 207, 209, 210
	Objectives Related to the Nine Basic Topics **I. Why The Law**
1.1	2, 3, 21, 23, 34, 38, 39, 50, 51, 52, 53, 54, 55, 60, 61, 62, 67, 68, 70, 71, 73, 74, 80, 94, 98, 99, 102, 115, 119, 122, 123, 124, 125, 127, 128, 131, 135, 138, 142, 143, 146, 148, 149, 150, 151, 153, 154, 156, 158, 159, 163, 164, 167, 170, 180, 182, 186, 189, 190, 191, 192, 193, 194, 196, 197, 200, 201, 202, 205, 207, 208, 209, 213, 214, 216, 217, 218
1.2	14, 15, 23, 41, 53, 60, 68, 115, 122, 142, 170, 181, 194, 208
1.3	2, 3, 9, 10, 17, 19, 20, 22, 23, 25, 34, 39, 41, 42, 45, 50, 51, 52, 54, 55, 59, 61, 62, 66, 67, 68, 69, 72, 73, 74, 78, 80, 87, 88, 89, 90, 91, 92, 93, 95, 99, 102, 115, 119, 122, 123, 124, 125, 127, 130, 131, 133, 135, 138, 141, 142, 143, 144, 146, 148, 149, 150, 151, 153, 156, 157, 158, 159, 160, 161, 170, 173, 174, 180, 181, 182, 183, 188, 189, 190, 191, 192, 193, 194, 196, 197, 200, 201, 202, 204, 205, 207, 208, 209, 212, 213, 214, 216, 217, 218
1.4	10, 20, 22, 45, 51, 52, 53, 54, 62, 68, 72, 80, 99, 104, 119, 122, 130, 132, 133, 135, 140, 141, 142, 144, 146, 150, 151, 152, 156, 157, 159, 170, 180, 181, 182, 184, 187, 189, 191, 192, 194, 195, 197, 204, 205, 208, 209, 216, 217, 218
1.5	8, 10, 13, 17, 18, 19, 20, 45, 51, 52, 53, 54, 55, 62, 78, 80, 85, 91, 122, 130, 133, 141, 142, 150, 152, 156, 157, 170, 174, 184, 191, 192, 193, 194, 197, 209, 216, 217, 218
1.6	2, 3, 4, 17, 21, 22, 24, 29, 34, 39, 41, 42, 45, 50, 51, 52, 53, 54, 60, 62, 66, 68, 69, 72, 73, 74, 78, 80, 87, 88, 89, 90, 91, 92, 95, 99, 102, 115, 119, 122, 123, 124, 125, 127, 129, 130, 133, 135, 141, 142, 143, 144, 146, 150, 151, 153, 156, 157, 158, 159, 160, 161, 170, 174, 180, 181, 182, 183, 189, 191, 194, 196, 197, 200, 201, 202, 203, 204, 205, 207, 208, 209, 213, 214, 216, 217, 218

Objectives	Activities That May Be Used to Help Accomplish the Objectives
1.7	2, 18, 19, 22, 23, 25, 29, 45, 50, 52, 53, 54, 60, 68, 72, 74, 80, 93, 94, 95, 98, 99, 100, 115, 119, 122, 125, 133, 141, 142, 143, 144, 146, 150, 151, 153, 154, 156, 159, 163, 167, 170, 174, 180, 181, 182, 189, 190, 191, 192, 194, 195, 196, 197, 200, 201, 202, 204, 205, 208, 211, 212, 213, 214, 215, 216, 217, 218
1.8	2, 40, 97, 126
	II. How The Law Develops
2.1	126, 130, 202
2.2	1, 10, 13, 34, 49, 51, 66, 68, 71, 98, 115, 122, 125, 129, 133, 150, 154, 163, 164, 170, 186, 192, 195, 197, 201, 205, 209, 212
2.3	115, 136, 186, 189
2.4	14, 45, 59, 60, 72, 164, 186, 189, 194, 213
2.5	14
2.6	45, 122, 133, 152, 170, 189
2.7	1, 10, 13, 45, 49, 94, 98, 122, 125, 129, 133, 163
2.8	1, 4, 10, 13, 29, 35, 40, 45, 49, 71, 94, 97, 98, 122, 125, 128, 129, 131, 133, 163, 205, 213
2.9	45, 49, 94, 98, 99, 100, 135, 151, 157, 158, 159, 163, 167, 179, 189, 200, 203, 204, 211, 216
2.10	3, 23, 99, 100, 167, 179
2.11	10, 13, 45, 49, 62, 66, 68, 94, 98, 122, 125, 129, 133, 152, 163, 170, 174, 178, 180, 181, 182, 189, 192, 193, 197
2.12	45, 59, 71, 129, 132, 133, 170, 189
2.13	13, 45, 49, 71, 94, 122, 132, 152, 164, 212, 216, 217
2.14	23, 45, 80, 129, 132, 133

Objectives	Activities That May Be Used to Help Accomplish the Objectives
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3.2	1, 2, 8, 13, 31, 40, 46, 85, 94, 95, 97, 98, 113, 126, 128, 144, 149, 152, 163, 173, 185, 188, 195, 203, 214, 215
3.3	13, 31, 72, 79, 85, 94, 95, 135, 146, 149, 152, 162, 173, 195, 203, 209, 212, 214, 215
3.4	149, 152, 209, 215
3.5	13, 26, 95, 98, 149, 163, 214, 215
3.6	46, 94, 95
3.7	72, 94
3.8	85
3.9	144, 149, 162, 214
3.10	31, 215
3.11	2, 8, 13, 19, 49, 55, 72, 94, 95, 128, 144, 174, 203, 212, 213, 214, 215
3.12	79, 94, 95, 135, 149, 214, 215
	IV. The Court System
4.1	45, 170, 177
4.2	1, 13, 48, 94, 95, 98, 116, 158, 163, 177, 206
4.3	2, 13, 35, 40, 45, 48, 95, 97, 98, 116, 158, 163, 164, 177, 206, 212, 213
4.4	46, 119
4.5	48, 72, 79, 85, 94, 95, 126, 152, 195, 206, 212
4.6	48, 72, 94, 95, 206
4.7	
4.8	72
4.9	72

Objectives	Activities That May be Used to Help Accomplish the Objectives
	V. Major Supreme Court Decisions
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5.2	1, 71, 94, 140, 164, 206
5.3	94
5.4	94
5.5	40, 43, 56, 58, 72, 79, 85, 94, 98, 103. 144, 163, 164, 178, 193, 195, 197, 199, 203, 204, 211, 212
5.6	164
5.7	164
5.8	43, 56, 58, 103, 195, 211
	VI. The Juvenile Court
6.1	2, 60, 94, 101, 134, 163, 166, 171, 181, 194, 213
6.2	2, 60, 68, 94, 101, 134, 163, 166, 171, 181, 194, 197, 209, 213
6.3	19, 25, 94, 101, 134, 155, 171, 213
6.4	19, 25, 94, 97, 98, 101, 117, 134, 150, 163, 166, 213
	VII. Due Process Of Law
7.1	2, 126, 128, 138, 152, 168, 170, 175, 209, 212, 213, 215, 216
7.2	94, 98, 168
7.3	59, 128, 157, 168, 170, 188, 209, 212, 213, 215, 216
7.4	59, 97, 98, 100, 138, 152, 163, 168, 175
7.5	14, 59, 72, 138, 139, 164, 168, 172, 175, 215
7.6	72, 94, 142, 168, 188. 209. 215, 216
7.7	72, 152, 168, 188, 209, 215, 216
7.8	72, 168, 216

Objectives	Activities That May Be Used to Help Accomplish the Objectives
	VIII. The Bill Of Rights In Criminal Cases
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8.2	2, 98
8.3	13, 62, 73, 92, 94, 95, 130, 204
8.4	163, 172, 184, 204
8.5	14, 16, 22, 98, 157, 163, 172, 184, 188, 200, 203, 213, 216
8.6	4, 14, 19, 22, 47, 72, 94, 95, 97, 98, 172, 187, 188, 203
8.7	14, 47, 95, 130, 184
8.8	94, 104, 119, 130, 136, 157, 184
8.9	4, 62, 73, 92, 130, 184
8.10	4, 130, 157, 203, 209, 215
8.11	20, 72, 94, 104, 119, 130, 157, 185
8.12	20, 72, 94, 104, 130, 203
	IX. The Bill Of Rights And Individual Civil Liberties
9.1	2, 10, 14, 38, 45, 60, 72, 94, 97, 98, 126, 151, 163, 164, 172, 178, 181, 184, 188, 189, 193, 197, 199, 200, 204, 216
9.2	14, 59, 139, 172, 215
9.3	13, 54, 66, 73, 123, 125, 127, 131, 133, 146, 148, 150, 151, 152, 160, 170, 174, 180, 182, 189, 190, 193, 194, 197, 200, 201, 202, 209, 210, 215, 216
9.4	45, 50, 52, 54, 58, 66, 68, 71, 72, 91, 92, 94, 99, 104, 119, 122, 124, 132, 133, 134, 141, 142, 144, 152, 157, 160, 170, 182, 184, 185, 187, 188, 191, 193, 194, 195, 197, 199, 203, 204, 209, 212, 215, 216, 217
9.5	45, 52, 54, 66, 68, 71, 91, 99, 104, 119, 122, 132, 133, 134, 141, 142, 144, 152, 160, 170, 182, 191, 194, 197, 199, 203, 204, 209, 212, 215, 216, 217
9.6	50, 52, 54, 62, 96, 160, 193, 197, 201, 202, 209, 215
9.7	14, 59, 139, 172, 186, 215

TABLE III
HOW ACTIVITIES RELATE TO SUBJECT MATTER AREAS

Subject Matter Area	Activity Numbers
	Elementary
General	1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32, 34, 35, 36, 37, 38, 39, 40, 41, 44, 46, 48, 49, 51, 52, 53, 54, 57, 59, 62, 63, 64, 65, 66, 67, 69, 70, 73, 74, 75, 76, 77, 78, 79, 81, 82, 83, 84, 86, 88, 89, 90, 91, 93, 94, 95, 96, 102, 105, 106, 107, 108, 109, 110, 111, 112, 115, 120, 121, 127, 131, 137, 145, 147, 149, 150, 152, 153, 154, 156, 159, 160, 161, 163, 165, 167, 169, 170, 176, 178, 179, 182, 183, 191, 192, 193, 194, 198, 200, 202, 207, 212
Physical Education	6, 7, 12, 16, 17, 18, 37, 41, 51, 62, 69, 73, 89, 90, 94, 161, 163, 178, 207
Art	18, 32, 33, 41, 46, 51, 62, 69, 90, 94, 161, 163, 178, 207
	Secondary
General - May Apply to All Teachers	39, 41, 51, 62, 69, 90, 94, 121, 149, 161, 163, 170, 178, 202, 207
Agriculture	23
Art	18, 32, 33, 46, 118, 138
Business Education	55, 60, 125, 174, 180, 187, 200, 201, 216, 217, 218
English Literature and Composition	2, 14, 15, 38, 42, 56, 87, 92, 126, 133, 172, 179, 183, 197, 204, 211, 215
Foreign Language	139, 172, 186
Guidance, Home Room, Student Council	2, 3, 8, 9, 13, 15, 17, 19, 25, 30, 39, 67, 68, 73, 88, 91, 93, 115, 117, 127, 131, 141, 142, 144, 150, 151, 160, 161, 166, 171, 180, 187, 191, 192, 193, 194, 200, 208, 209, 213, 216
Home Economics	2, 13, 15, 21, 27, 55, 60, 87, 102, 114, 123, 124, 125, 150, 151, 166, 174, 180, 187, 201, 216, 218
Industrial Arts	21, 55, 102, 196

Subject Matter Area	**Activity Numbers**
Journalism	79, 85, 141, 204
Library	203, 204, 206
Math	24, 70, 74, 130, 133, 135, 162, 163, 201
Music	31, 36, 173
Physical Education	17, 89
Safety & Driver's Education	2, 13, 26, 50, 55, 60, 74, 87, 123, 125, 128, 146, 148, 174, 180, 190, 205, 206
Science	3, 13, 14, 50, 52, 53, 54, 66, 70, 90, 123, 124, 133, 156, 159, 182, 187, 193, 212
Social Studies (Including economics, geography, government, history, and sociology)	1, 2, 3, 4, 8, 9, 10, 13, 14, 17, 18, 19, 20, 21, 22, 25, 26, 27, 31, 32, 34, 35, 38, 40, 42, 43, 45, 46, 47, 48, 49, 52, 53, 54, 55, 56, 58, 59, 60, 61, 66, 68, 70, 71, 72, 79, 80, 85, 87, 89, 91, 92, 93, 95, 97, 98, 99, 100, 101, 102, 103, 104, 108, 110, 113, 115, 116, 117, 118, 119, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 138, 139, 140, 141, 142, 143, 144, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 162, 164, 166, 167, 168, 171, 172, 173, 174, 175, 177, 179, 180, 181, 182, 184, 185, 186, 187, 188, 189, 191, 192, 193, 194, 195, 197, 199, 200, 201, 203, 204, 205, 206, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218
Speech, Debate, Drama	15, 20, 43, 59, 68, 71, 92, 104, 119, 133, 135, 159, 162, 187, 189, 204, 214, 216, 218

ACTIVITIES

- 1 -

INVESTIGATING ROLES IN GOVERNMENT

When studying the topics of local, state, or national government, identify the principal branches, offices, and agencies (e.g., in national government — presidency, legislature, courts, regulatory agencies; in state government — governor, legislature, courts, regulatory agencies; etc.). Those roles could be broken down further (e.g., the presidency could be broken down into President, Vice-President, and some of the specific Cabinet and White House Officers; the state courts could be broken down into Supreme Court Justice, Court of Appeals Judge, Circuit Court Judge, Juvenile Court Judge, prosecuting attorney, defense attorney, clerk of the court, bailiff, juror, etc.)

Have students volunteer or be elected to the various roles or offices. Then have each student (or group of students having the same office or role) investigate:

1. How people are selected for the office.

2. What powers and responsibilities people in the office have.

Encourage students to investigate those questions using a variety of approaches (reading newspapers and reference books, viewing television news broadcasts and educational filmstrips, interviewing authorities, etc.).

When students are ready to report, use creative approaches for reports like having the students who are to report plan role plays to illustrate some of the things they do, or have them pretend they as incumbants in the office are visitors to the class. They could be introduced as President (last name), Senator ________, or Judge ________, and the class could be told they have only a few minutes to interview the visitor. After the interview discussion, ask students to suggest what kind of qualities a person in that position would need.

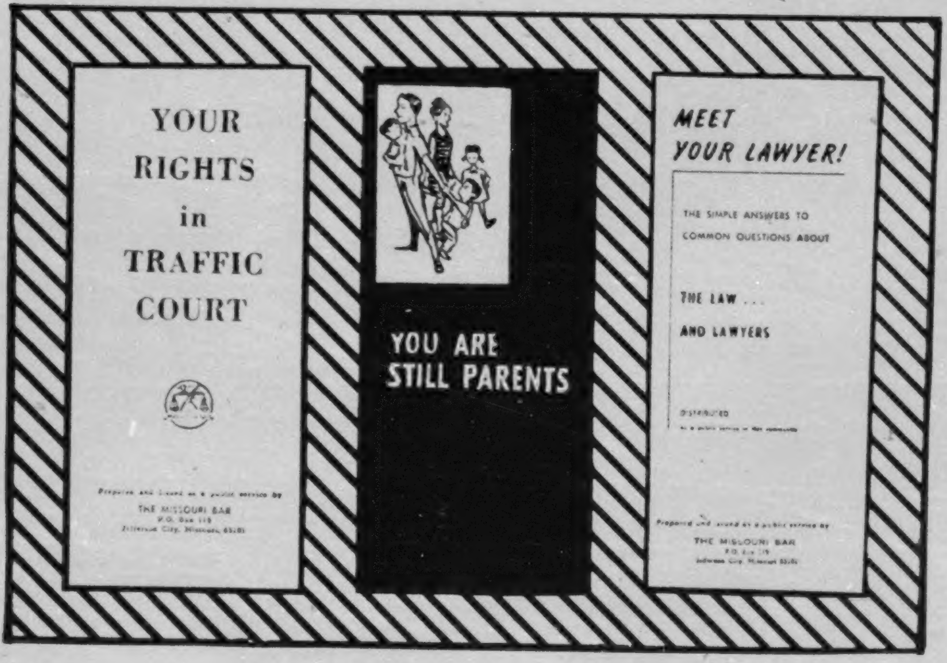
(See Objectives 0.1, 0.5, 2.2, 2.7, 2.8, 3.2, 4.2, and 5.2.)

- 2 -

LAW-FOCUSED EDUCATION THROUGH AN ENGLISH WRITING EXERCISE

Pamphlets from The Missouri Bar may be a challenge to read for many students; yet certain important points for the consumer or citizen may be found in them (e.g., "Buying On Time," "Buying A Home," "With This Ring I Thee Wed," "Your Rights If Arrested," "Your Rights in Traffic Court," "Divorce," etc.).

Have students rewrite pamphlets in language they understand. They'll learn important matters related to law while working on sentence structure, punctuation, and capitalization. They could also illustrate the pamphlets.



YOUR
RIGHTS
in
TRAFFIC
COURT

Prepared and issued as a public service by
THE MISSOURI BAR

YOU ARE
STILL PARENTS

MEET
YOUR LAWYER!

THE SIMPLE ANSWERS TO
COMMON QUESTIONS ABOUT

THE LAW . . .
AND LAWYERS

DISTRIBUTED

Prepared and issued as a public service by
THE MISSOURI BAR

Then, discuss with the students what is law and what roles law plays in people's lives, and raise the issue of whether or not law is needed.

An added incentive for the students would be to send completed pamphlets to the Better Business Bureau or to The Missouri Bar to show what the students have done.

(See Objectives 0.1, 1.1, 1.3, 1.6, 1.7, 1.8, 3.2, 3.11, 4.3, 6.1, 6.2, 7.1, 8.5, and 9.1.)

- 3 -

ARE LAWS MADE TO BE BROKEN?

To make students aware of laws which are often broken, yet necessary, ask each student to write down at least one law he or she has broken. Call on various students to tell you the law they have broken and why they broke it. Make a list of laws often broken by juveniles. Examples, which will vary with the community, may include jaywalking, playing in streets, littering, trespassing, hitch hiking, carrying a knife, lighting fireworks, buying cigarettes, breaking curfew, making loud noises, turning stop signs, burning leaves, and turning on a water hydrant.

Discuss, "Why is each law necessary?" If students cannot give reasons for particular laws, it may be desirable to contact an official who could give the rationale for the law.

Then, let each student draw a cartoon showing the need for the oft-broken law with a caption underneath. Use the cartoons for a bulletin board.

(See Objectives 0.1, 0.4, 0.5, 1.1, 1.3, 1.6, and 2.10.)

- 4 -

ATTITUDE TOWARD POLICE SURVEY

Pass out a sheet containing questions like those in the box below. Have students write their answers to the questions.

Student Attitudes Toward Police and Authority

DIRECTIONS: Using the following code, answer questions 1-12. Answer questions 13-14 as indicated after the questions.

a — Strongly agree
b — Agree
c — Undecided
d — Disagree
e — Strongly disagree

1. _____ The police should have the right to use whatever means are necessary to capture and punish criminals.
2. _____ Law officers, like state or local police, should not be allowed on school property even if there should be disturbances.
3. _____ High school students should be permitted to dress any way they please, to wear their hair the way they want, etc.
4. _____ Policemen are pretty nice guys.
5. _____ People would be better off without police.
6. _____ Police get criticized too often.
7. _____ The police don't even give you a chance to explain.
8. _____ The police treat all people alike.
9. _____ The police have it in for, or pick on young people.
10. _____ Criminals usually get caught.
11. _____ Teachers treat all people alike.
12. _____ Teachers are pretty nice guys.
13. Would you like to be a policeman?

    _____ Yes
    _____ No
    _____ Maybe

14. Would you call the police if you saw someone breaking into a store?

    _____ Yes
    _____ No
    _____ Maybe

Then, discuss with the students why they answered the way they did. As a further follow-up, the questionnaire (or another questionnaire prepared by students) may be given to their friends, a specific class, or a cross section of age groups and positions of authority, such as teachers, counselors, principals, parents, and clergymen. Compare findings, if the questionnaire is given to other groups, with those of the class. Discussion may follow to hypothesize why attitudes differ. If attitudes toward police are negative, have students suggest consequences, encourage them to investigate what policemen in fact do, and how police must operate within the constraints of the Constitution and have them visit with the local police department to find out how the department tries to help the public have positive attitudes toward police.

(See Objectives 0.1, 0.5, 1.6, 2.8, 8.5, 8.9, and 8.10.)

- 5 -

WHAT'S FAIR? A MATTER OF COOKIES

Tell the following story:

> One day each week Mrs. Allen invites the children on her block to come to her house for a "cookie party." They make cookies with her and then sit on her porch to eat the cookies and drink lemonade for their "party." All the children love Mrs. Allen and enjoy the "party" every week.
>
> Mrs. Allen has one rule everyone must obey. To have fun at the "party" each child must help with making the cookies and cleaning up the kitchen afterwards. All the children know this rule and say it is fair.

Ask children: what makes a rule a fair one?

Then introduce other situations, and discuss what would be the fair thing to do:

1. Steven has just moved onto the block. One of the children asked him to come to the party the next day but forgot to tell him to come early enough to help with making the cookies; so he didn't come over until he saw Mrs. Allen and the children sitting on the porch. Should he be allowed to join the party? Who should decide? What will be the consequences of changing the rule for him?

2. One day Keith came running up and asked to join the group on the porch. He had always helped making the cookies and cleaning up before, but said this time he had been playing ball in the park with some boys and forgot the time. Should he be allowed to join? Who should decide?

3. Another time Bob arrived too late to help, though he too usually did help. He said he had been shopping with his mother and they were delayed downtown because his mother had so many errands.

Discuss what will be the consequences of breaking the rule for special people. The children could discuss various alternatives for making the decisions (by Mrs. Allen alone, by the children, or by Mrs. Allen and the children together with each having one vote). Should there be a chance to appeal the decision to Mrs. Allen if the children make the decision, or should there be an impartial decision-maker in cases of conflicting opinions? Mr. Allen could be suggested for this role.

(See Objectives 0.1, 0.8, 0.9, 0.10, 1.2, 1.5, 2.2, and 3.1)

- 6 -

A RULE THAT POSES A PROBLEM

Play the game "Simon Says" —

"Simon says, 'Raise your hand.'

"Simon says, 'Close your eyes.'

"Stand up.

"Simon says, 'Open your eyes and sit down.'

"Simon says, 'Hold your breath' (Then pause for a long time.)

Then discuss the matter of why all of the children broke the game's rules. Why didn't all children do what Simon said? Is the rule to always do what Simon says something that must always be obeyed? Why not? When should someone choose to break a rule?

(See Objective 0.1, 0.4, 0.10, and 1.4.)

- 7 -

WHY RULES?

Materials needed: 2 small balls.

Ask six or eight students to go into the hall and divide themselves into two groups. (Do not tell them how to organize themselves or what will happen when they come back.)

After they have gone outside, tell rest of class to call out, "go, go," "win, win" as soon as you toss a ball to each group.

When two groups come in, put one group in one corner, and the other group in another corner. Then, throw a ball to each group, following which the class calls out, "go, go," "win, win," and claps and cheers. Watch what the two groups do.

Questions for follow-up:

1. How did the group members feel? What did they need to know that they didn't know?

2. How did groups organize themselves? By sex, by size, or by friends? Were the groups equal in number? Would they have organized differently if they had known the rules of the game?

3. Can you think of other situations where it would help to know rules in advance? (e.g., in games and sports, in driving bicycles and automobiles, in purchasing goods and services, in manufacturing products like foods, automobiles, etc.)

(See Objective 0.1, 0.10, 1.3, and 8.4.)

- 8 -

COURT SIMULATION ACTIVITY

Have students discuss what "basic injury law" and "basic elements of contract law" mean.

Basic injury law: "Any person whose careless and negligent action causes damages (injury or loss of property) to another person must pay the other person for losses arising out of damages."

Basic Elements of Contract Law: (a) Something of value is offered by one party, and (b) it is accepted by the second party in exchange for something else of value. (c) The agreement may be verbal or written.

Then move activity into Rounds 1 and 2, which are listed below, the students' task being to determine how basic injury law and the basic elements of contract law should be applied in specific cases.

Round 1

Divide class into groups of three (one defendant, one plaintiff, and one judge). Judge listens to facts presented by plaintiff and defendant, comes to a fair decision, and gives reasons. Roles should be shifted in each of the following 3 cases.

First case:

1. Plaintiff is the assistant to a newspaper delivery boy.

2. Defendant is a newspaper delivery boy.

3. Defendant became sick and asked his helper, the Plaintiff, to deliver 50 papers. Plaintiff agreed to deliver the papers for $2. Plaintiff delivered papers, but did not place them in mail boxes or inside halls. Twenty-five newspapers were ruined in the rain, and Defendant refused to pay the $2 to the Plaintiff. Plaintiff sues.

Second case:

1. Plaintiff is a babysitter.
2. Defendant is a parent.
3. The Plaintiff agreed to babysit for the Defendant's two children for fifty cents per hour. When the babysitter arrived, there was a third child, a cousin, present. Plaintiff said nothing about an increased rate at the time, but demanded 75¢ when Defendant returned home two hours later, claiming the rate to be 25¢ per child. The Defendant refuses to pay the additional 25¢ per hour. Plaintiff sues.

Third case:

1. Plaintiff is a comic book collector.
2. Defendant is a classmate.
3. Plaintiff loans ten comic books to Defendant for one week. The books are in very good condition, and Plaintiff warns Defendant to be careful of them. The Plaintiff had paid 25¢ per copy for the books, or a total of $2.50. Defendant returns five comic books in good condition, but five are torn and ripped. Plaintiff demands $2.50 from Defendant to cover costs. Defendant refuses. Plaintiff sues.

Round 2

Divide class into groups of six (two are Plaintiff and attorney, two are Defendant and attorney, one is Judge, and one is observer and Court Reporter). Judges leave their group while Plaintiff and attorney, and Defendant and attorney work out their arguments. Observer listens and makes notes while they are doing that, and summarizes arguments presented to the Judge in writing. The Judge returns in 10 minutes to listen to arguments, come to a decision, and give reasons for it.

First case:

Mr. Jones had a huge apple tree in his yard which he tended with loving care. He watered, fed, and pruned it carefully so that it grew the largest and most delicious apples in the entire county.

In the house next door to Mr. Jones lived Mr. Brown. Mr. Brown's only pleasure in life was his beautiful yard, for which he had won many garden awards.

One day while Mr. Brown was working in his yard, he noticed a branch from Mr. Jones' tree hung over into his yard. He was horrified to see rotting fruit scattered about on the ground. His beautiful yard was a mess, and his grass was turning brown in spots because of the rotting apples. This made Mr. Brown very angry. He ran into his house, got a saw, and hacked off the branch.

Mr. Jones brought the case to court, claiming his apple tree was permanently damaged by Mr. Brown's haphazard cutting. Therefore, he is asking for $75 in damages to replace the tree.

Second case:

Chuck is captain of a baseball team. The team decided to order 15 new jerseys to be delivered by April 3rd for the opening game. Each jersey was to be lettered with the team's name, "Cardinal Juniors."

Chuck placed the order 6 weeks before the game, and stopped in the store one week before the game to make sure the jerseys would be ready. The store owner assured Chuck that they would arrive in time.

On April 3, Chuck went to pick up the jerseys, but they weren't there. The store owner stated that because of a mail strike the shirts had been delayed in shipment — nothing he could help.

Chuck was furious. He told the store owner to keep the jerseys — that he did not want the shirts when they did arrive, and he would not pay for them.

The store owner takes this case to court, asking $45 (shirts were $3 a piece).

Third case:

John is a 4th grade student. Larry is a 6th grader and a custodian's helper in the school.

John had to stay after school for an assignment and was still in the locker room when Larry came in to clean it. Larry ordered John to get out, saying it was against school rules to be there after 4. John said "You can't make me!" Larry shoved him, John's glasses fell off, and a lens broke. John charged Larry with the bill for a new lens. Larry refused to pay. John took the case to court demanding $20 to pay the optical bill.

(See Objectives 0.1, 0.6, 0.7, 0.9, 0.10, 1.5, 3.1, 3.2, and 3.11.)

- 9 -

CAUSES OF JUVENILE DELINQUENCY — A ROLE PLAY

Role play a situation in which juveniles are apprehended by a law officer in various situations, such as drinking, speeding, drug usage, loitering, smoking, running away, vandalism, shoplifting, and truancy. Be sure to get the reactions of the arresting officer.

Have the students discuss how they reacted to the various roles, what their feelings were.

Discuss why they think some young people commit these crimes? Encourage students to give as many possible reasons as they can think of. Do any people get hurt when those laws are broken? (Discuss who, how, and why.)

The following activities could be part of the adaptation of the above to the elementary level:

1. Give each child a large sheet of construction paper, scissors, and crayons. Have the children cut out an oval for their face near the top of the paper. With crayons, draw hair, ears, etc., around the oval and create the character they are supposed to represent. Then, have them role play the activity as suggested above.
2. Give or have each student playing a role make a doll. Using the dolls, the child acts out the role. This might be particularly good for shy children or those unable to express themselves well.

(See Objectives 0.1, 1.3, and 8.7)

- 10 -

GUN CONTROL

Ask students to collect articles and any other materials that they can find about gun control, including Amendment II, U.S. Constitution and copies of pending legislation, which may be obtained from Missouri Senators or Representatives. Have these materials presented to the class. Let students discover what values underlie the pending legislation and the various arguments pro and con. (Such values might include peace and order, freedom and liberty, general welfare, etc.). Encourage the students to interview their parents to hear their stand on gun control laws.

Have students try to draft proposals for legislation that would protect public safety without destroying people's liberty. Have students predict which groups would favor their proposals, which would oppose their proposals, and what would be the consequences if their proposals are passed as laws. Students could debate one or more of the proposals.

(See Objectives 0.1, 0.2, 0.3, 0.4, 0.5, 0.6, 0.7, 0.12, 1.3, 1.4, 1.5, 2.2, 2.7, 2.8, 2.11, 9.1, 9.4, and 9.5.)

- 11 -

WHY WE HAVE TAXES

Ask your class why we have taxes, bringing out the services that government renders. What would it be like without these government services? Then, show the film "Why We Have Taxes: The Town That Had No Policeman" (Learning Corporation of America, Steven Bosustow Productions, 1970). This film uses cartoons to show a town with a tailor, sandal maker, housebuilder, basket maker, baker, and farmer each selling their product for their income. A thief robs each of them, and they don't know what to do. Finally, it is decided that they need a policeman. The housebuilder's son would like to be the policeman, but would have no income. It is decided that everyone else will put in some money and call it taxes. The thief is caught and made to pay.

As a follow-up, make a list on the chalkboard of the services that taxes pay for. Even though we may complain about paying taxes, could we do without these services?

(See Objectives 0.1, 0.4, 0.10, 1.1, 1.3, and 1.6.)

- 12 -

THE CANDY GAME — FAIR RULES

Materials: Two kinds of wrapped hard candies, such as striped peppermints and lollypops.

Hand out two kinds of candy (one per student). Point out to students that they are starting equal in their resources for the game; each student has one piece of candy.

Tell all students having lollypops they must give their candy to students having peppermints and that they are now out of the game.

Pair off all students still in the game by two's. Tell the taller one in each pair to give candy to shorter one and that they are to get out of the game.

All students holding candy should line up according to being left-handed or right-handed. Tell all right-handed students to hand candy to left-handed students and then get out of the game.

Continue in this way selecting arbitrary categories, such as color of clothing, number of children in their family, color of eyes, straight or curly hair, etc., with loser(s) having to give candy to winner(s). One child will end with all the candy, and teacher calls him or her "the winner," or "the champion."

Then, ask students what would be the fairest rule for ending the game, beginning with the child who has all the candy and letting others offer suggestions. Follow the suggestion most children will find fair — everyone should get one. Discuss whether first rules of the game were fair? Who made them? Were rules based on something the children could control? Did the children have any "say" in the rules?

If the "winner" or other participants try to put candy in their pockets, see who saw it happen. Discuss who should enforce rules. What is the responsibility of people in a game to tell about cheating? What is the responsibility of children and adults when they see rules or laws broken?

(See Objectives 0.1, 0.8, 0.9, 0.10, 0.13, 0.14, 1.5, 2.2, and 9.3.)

- 13 -

OUR LEGAL TOOLS[1]

1. Begin by brainstorming with students (probably a review of U. S. History and/or government courses) about the different sources of laws in our society asking them to give an example of a problem each might handle.

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[1] *These ideas* were suggested by Summers, Campbell, and Bozzone, *Justice and Order Through Law, Unit II*, Ginn, 1974. See the book for a more detailed discussion of "Our Legal Tools."

Sources of Law:

Legislatures (national, state, county, municipal)

Make, repeal, or change laws recognized by citizens as needed for health, safety or general welfare.

Executives

Executive Orders — have the force of law until amended or rejected by legislatures.
Regulatory Agencies — set rules and standards for carrying out laws in specific areas according to authority delegated by legislatures.
Enforcement Agencies — a set of professional officials responsible for charging and punishing people who break the law.

Judiciary

Interpretation and application of law in particular cases, court decisions (common law).

2. Using flash cards made from newspaper headlines have students discuss specific legal action(s) that could be taken by the appropriate branch(s) to solve that particular problem.

Examples:

"Woman Shot While Trying To Prevent Break-In Died This Morning"
"FDA Finds Food Contaminated"
"Speed Limit Set At 55 M.P.H. By Nixon"
"Vandalism In Schools Costs Board of Education Thousands of Dollars"
"U. S. Faces Major Energy Shortage Within 5 years"
"Illiteracy Linked to Unemployment of City Youth"
"Drugs Blamed For High Crime in Neighborhood"
"Sears Executive Discusses Problem of Shoplifting — Customers Pay For It"
"EEOC Points to Discrimination in Promotions For Women"
"Citizens Organize Neighborhood Association to Stop Litter, Work Days Scheduled"
"Missouri Conservation Budget Cut Threatened"

3. Looking at the way law was used to solve the problems, have the students identify what might be called our legal tools. Discuss the source(s), characteristic(s) and purpose(s) of each. May be done either by brainstorming with whole class, by small group discussions — dividing up the problems, or individually.

a. Criminal law tool

Source — Legislatures, judiciary branch, law enforcement agencies
Characteristics and purposes — laws which prohibit specific acts or behavior widely regarded by citizens as morally bad, or destructive, and which tell people what punishment will follow if they commit acts.

b. Civil law tool

Source — Legislatures, judiciary branch, court decisions (common law), Individual Suits
Characteristics and purposes — laws, suits, and decisions whose purpose is to compensate people for damages done to their persons or property by others.

c. Administrative and Regulatory tool

Source — Regulatory or administrative rules and standards within limits set by legislatures.
Characteristics — rules and standards set up to protect health, safety, or general welfare of citizens in a specific area. Enforced by hearings, cease and desist order, power to take to court.

d. Public benefit/cost tool

Source — Legislatures, regulatory agencies
Characteristics/purposes — benefits and subsidies voted by legislatures to assist with specific public responsibilities (education) or problems (decayed housing). Legislatures must also vote for public funds to pay for these benefits in the form of taxes.

e. Executive Order tool

Source — The President, governors of States
Characteristics/purposes — used in an urgent situation to solve a particular problem in which there is great public interest — has force of law only temporarily. Must be accepted, amended, or repealed by the federal or state legislature.

f. Private Action tool

Source — The private citizen
Characteristics/purposes — Associations or organizations, set up by private individuals to accomplish a specific purpose(s). Sometimes these are very small (one or two people), and informal (such as social clubs). Others are very large and usually reinforced by a formal legal structure (such as being a tax-exempt corporation, setting up Articles of Agreement, creating a trust or signing a contract).

4. Now take the specific problem of air pollution and see how each of the sources of law and each of the tools can be used to solve it. (Cases are cited in *Unit II, Justice and Order Through Law*). Other issues, such as the energy shortage or neighborhood housing problems, may be used.

(See Objectives 0.1, 0.2, 0.3, 0.13, 0.14, 1.5, 2.2, 2.7, 2.8, 2.11, 2.13, 3.1, 3.2, 3.3, 3.5, 3.11, 4.2, 4.3, 8.3, and 9.3.)

- 14 -

RIGHTS AND RESPONSIBILITIES AND THE FUTURE

Develop from science fiction stories the differences in man's rights and responsibilities from those found in the Constitution. The stories listed below come from the anthology *Science Fiction: The Future* by Dick Allen (Harcourt, Brace Jovanovich, Inc.):

— Ray Bradbury's "To The Chicago Abyss"
— Harlan Ellison's "Repent Harlequin; Said the Ticktockman"
— E. M. Fousler's "The Machine Stops"
— D. M. Thomas' "Tithonus"
— Kurt Vonnegut's "Harrison Bergenon"

Other science stories useful for such analysis are George Orwell's *1984*, Aldous Huxley's *Brave New World*, B. F. Skinner's *Walden II*, Madeleine L'Engle's *A Wrinkle in Time*, and others.

(See Objectives 0.1, 0.2, 0.3, 0.5, 0.8, 0.9, 1.2, 2.4, 2.5, 7.5, 8.4, 8.5, 8.6, 9.1, 9.2, and 9.7.)

- 15 -

THE INVITATION TO RESPONSIBILITY

Develop a unit on writing an invitation that makes assumptions about rules or laws concerning personal behavior:

— a classmate's birthday party given in a student's home and/or in the classroom
— Pip's first meeting with Miss Havisham and Estella (from Charles Dickens' *Great Expectations*)
— the general remark, "Drop by for a visit"

Role play results into questions or statements about individual responsibility.

(See Objectives 0.1, 0.14, 1.2, and 3.1.)

- 16 -

THE CHALK GAME

The purpose of this game is to help students learn the need for consistent, concise rules.

Materials: One piece of chalk per team and some masking tape for each participant.

Conduct the game as follows:

1. Two teams of seven people should be selected. Have them stand in lines, one behind the other.

2. The teacher tells the teams, that the object of the game is to pass the chalk among the teammates. Teacher says, "Go." Just as the game gets started, the teacher yells, "Stop."

3. The teacher informs the teams that each member must go to a designated spot and return before passing the chalk on to the next person. The teacher again says, "Go," and in a few minutes says, "Stop."

4. The teacher now tells the teams that the masking tape should be wrapped around each person's left finger (sticky side out) and the chalk is to be passed by tape only. No hands can touch the chalk or else the team must start over. "Go!" "Stop."

5. The teacher continues adding rules until the students start to object. At this point, the game is stopped, and the students take their seats.

As a follow-up, a discussion of the game should take place, considering such questions as "Was the game a fun game?", "Were the rules of the game fair or unfair?" or "Were the rules clearly defined?". Then, discuss with the students other situations where the rules or laws were not clearly defined.

(See Objectives 0.1, 1.3, and 6.4.)

- 17 -

LAND OF CONFUSION

1. Divide class into four groups — "mummers," "noisemakers," "organizers," and "disorganizers." Inform groups that they will get a chance to plan and carry out activities of their choice.

2. Teacher will explain to each group in advance as to their specific roles and select a leader for each group.

   a. *Mummers* — remain quiet at all times. Communication is through note writing. Their leader will suggest quiet activities for the group (e.g., silent reading, art projects, puzzles).

   b. *Noisemakers* — very noisy. All activities their leader will suggest will create more noise. In addition, they will eat potato chips (thus, crunching and rattling the bags).

   c. *Organizers* — will be very concerned with order in the classroom. Leader will designate jobs for group members (e.g., washing blackboards, straightening books or supply cases, etc.).

d. *Disorganizers* — will spend time undoing projects by other groups. Leader will designate what members will do (e.g., tearing paper, cluttering floor, drawing all over blackboard, etc.).

3. At given time, groups will separate into specific sections of the room. A time limit, depending upon the teacher and class, will be set for project.

4. Follow-up discussion questions:

a. How did the students feel in such a confused state?

b. Discuss how the problems could have been dealt with.

c. What effective changes can be made through use of specific rules or laws?

d. How does this relate to society?

(See Objectives 0.1, 0.4, 0.14, 1.3, 1.5, and 1.6.)

- 18 -

LAW COLLAGE

The entire class is to express their ideas and thoughts about the law through the creation of a class collage. (Materials needed: magazines, paste or adhesive, scissors, and craft paper.)

1. Have the students bring in pictures of police and "law" scenes that illustrate some aspect(s) of law (use magazines, advertisements, etc.).

2. Make a large classroom collage, and discuss the various pictures and implications of the law that are involved.

3. Is this a **complete** picture of the legal or law process? Negative and positive connotations of pictures can be discussed.

4. Invite a policeman or lawyer to the classroom to discuss the meaning of the collage and to get his or her ideas on how complete and accurate a perspective the collage provides on law and/or the police.

(See Objectives 0.1, 0.2, 0.3, and 0.5, and 1.7.)

- 19 -

YOU BE THE JUDGE

Discuss what a juvenile is. Ask students for their understanding of how juvenile arrests and hearings are handled. Prepare the students to see the film, *You Be The Judge* (AIMS Instructional Media Services, Inc., Graphicom, Paul Honore, 1972), by telling them in advance that this film deals with three cases of juveniles who are arrested. After seeing all three cases, we'll let you be the judge. Show the film and stop where film indicates, to discuss what the students think should be done with each case.

Case 1 — Two girls arrested for shoplifting. First offense.

Case 2 — John arrested for truancy. Mother can't handle him. He has been arrested before.

Case 3 — Larry is arrested for selling drugs. He has been arrested many times before and has been through several programs.

Show the conclusion as to what happened, comparing what happened to the opinions of students. Other points to bring out in the discussion include the facts that (a) each child was told his rights when arrested, (b) in each case the child as an individual is handled differently, and (c) John had no lawyer, whereas Larry did have one.

(See Objectives 0.1, 0.6, 0.7, 0.10, 0.12, 0.14, 1.3, 1.5, 1.7, 3.11, 6.3, 6.4, and 8.5.)

- 20 -

CRIME AND CRIMINALS

The students will study agencies and institutions that deal with the rehabilitation or punishment of criminals (e.g., juvenile detention centers, city and county jails, state prisons, office of probation and parole, etc.).

1. Arrange debates on the topic of capital punishment.

2. Have students investigate and discuss alternate approaches for dealing with criminals, such as work release programs, probation, and urban centers. An excellent resource filmstrip is *Law in a Democracy: Consequences for the Convicted* (Guidance Associates).

3. Invite an official of a halfway house in the area to explain their program to students. Other community resource people may be invited, such as an official from the Office of Probation and Parole.

(See Objectives 0.1, 0.2, 0.3, 0.4, 0.5, 0.6, 0.7, 0.8, 0.9, 0.11, 0.14, 1.3, 1.4, 1.5, 8.11, and 8.12.)

LAW IS EVERYWHERE!

The teacher tells a story and asks the students to raise their hands when the law is involved in the story. The students are then asked to tell in what way the law is connected to that part of the story.

The two stories in the boxes below are used to illustrate the extent to which law affects our daily lives.

Story I

David Bradley (1) is 15 years old (2). He enjoys nothing more than riding his bike (3) and allowing his dog (4) to follow along. Thursday he started through the park (5) and met a man who was selling (6) chances (7) to win thousands of dollars in a state lottery (8). David bought a 25 cent ticket (9) and it turned out to be the big winner. He then bought a car (10) and took his dog for a ride (11).

(1) legal name
(2) birth certification
(3) bike and traffic laws
(4) leash laws
(5) public places
(6) vending laws
(7) gambling laws
(8) gambling laws
(9) monetary laws
(10) laws governing motor vehicles and juveniles
(11) laws governing operation of motor vehicles

Story II

After I got up this morning, I decided what to wear (1) while I brushed my teeth with the newest toothpaste (2). While drinking my orange juice (3) and coffee (4), I listened to the radio (5) and let my dogs out for their morning run (6). When the mail arrived (7), I found a number of bills and circulars advertising property for sale (8). Included was a stamp with my name asking for a contribution of $2.00 (9). When I washed the dishes, the water (10) did not have sufficient pressure so I telephoned (11) city hall.

(1) laws against nudity
(2) PFDA
(3) PFDA
(4) import controls
(5) federal licensing
(6) local licensing and fencing laws
(7) federal laws
(8) contract law, truth in lending, fraudulent use of the mails
(9) law on unsolicited merchandise
(10) municipal services law
(11) regulation of public utilities

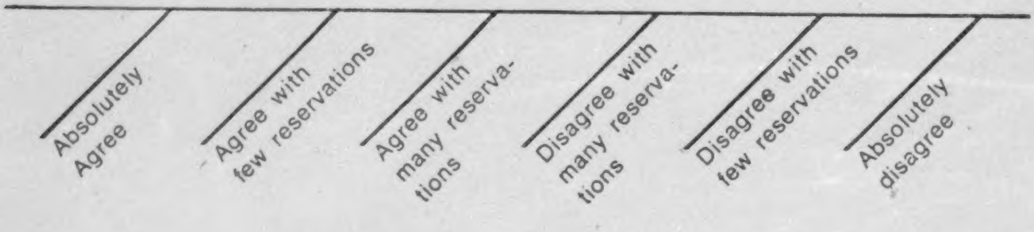
Follow-up activity: Have students make a collage of pictures showing laws or rules in operation, or a set of homemade slides without titles for a slide show to take to younger classes. Have students discuss the question of what would life be like without law.

(See Objectives 0.1, 1.1, and 1.6.)

- 22 -

USES OF VALUES CONTINUUM FOR JUDGING POLICE ACTIONS

Draw the continuum line below on the blackboard. Give chalk to five or six students, and ask each of them to measure their attitude toward the policeman's action in the following scenes by putting their initials on the continuum. Each student may be asked to explain his/her decision to the class, with the class encouraged to ask questions. Or only those students who change their decision may be asked to explain why they changed their minds about what the policeman did.


Absolutely Agree
Agree with few reservations
Agree with many reservations
Disagree with many reservations
Disagree with few reservations
Absolutely disagree

Scene 1: You come out of a store and witness a person running across the parking lot. A policeman calls "halt." Then fires his gun. (The policeman's action is the same in each scene below.)

Scene 2: Same scene, except it is plain the person running is running toward **your** car.

Scene 3: Same scene, except your girl friend (mother, boy friend) is in your car, and the person running has what appears to be a knife in his hand.

Scene 4: You have evidence that the person running has just shot at the policeman on the parking lot.

Scene 5: On your way out of the store you had heard an excited clerk talking about a hold-up at her cash register.

Scene 6: The person fleeing is a woman, and in firing at the policeman had hit a child. In this scene the policeman called "halt", and then fired **at** the fleeing woman.

This activity can be used to generate discussion about police actions, and to allow students to articulate their reasons for taking a particular position and for changing their position.

Follow-up steps may include:

1. Having a policeman present during the discussion or come in during a subsequent class period to tell what Missouri laws and Department policies regulate police actions in these situations, and precisely when he is allowed to use his gun and how.

2. Have students watch TV police programs to see whether the use of guns would or would not comply with state laws.

(See Objectives 0.1, 0.2, 0.4, 0.5, 0.6, 0.7, 0.10. 0.11, 0.12, 0.14, 1.3, 1.4, 1.6, 1.7, 8.5, and 8.6.)

- 23 -

THE NEED FOR LAW IN URBAN SOCIETY

As our country moves from an agricultural to an urbanized society, more laws are needed. More people living nearer each other necessitates more laws to help the people get along.

The words "agriculture" and "urban" will be defined on the board for the children. Children should obtain pictures from magazines or newspapers showing agricultural communities and urban communities. The children will be able to recognize by sight the pictures that show characteristics of an agricultural community and those of an urban community. From these pictures a mural could be constructed.

The teacher will stimulate the class for discussion by asking thought-provoking questions, such as "Do you think more types of transportation are needed in the city or in the country? Why?", "How is food acquired in an urban community as opposed to in an agricultural community?", "Why are more laws needed when urbanization takes place?", and "Why are fewer laws needed in agricultural communities than in large urban communities?"

Through disucssion of the above questions, children will realize that as urbanization occurs new rules or laws have to be made. Children will also realize that in an agricultural society, rules are also necessary, but not so many and nor so complex as in an urbanized society.

Follow-up activities: (a) A scrapbook having pictures and captions denoting agriculture or technology, and (b) skits having children role play situations in agricultural communities compared to those in technological communities.

(See Objectives 0.1, 0.3, 0.5, 1.1, 1.2, 1.3, 1.7, 2.10, and 2.14.)

- 24 -

MATH RULES AND LAW-FOCUSED EDUCATION

What rules are there in math for addition, subtraction, multiplication and division?

1. Have students work out a few problems and explain the rules they followed in working out each problem.

2. Would it be possible to do math problems if there weren't any rules to go by?

3. What would happen to United States business without rules in math?

(See Objectives 0.1 and 1.6.)

- 25 -

JUVENILE COURT SIMULATION ACTIVITIES

Read the stories below. What do you think should happen to those boys? They both have committed a similar crime. Do you think they should have similar punishment?

Story I

Harold was 12 years old, usually went to school every day, and brought home very good grades. His parents were proud of him and helped him find after school jobs. One Saturday, Harold and his friends went downtown. They went into a jewelry store and looked at watches. Harold's friends said, "We'll look out for the guard, and you steal that expensive watch." Harold said, "Okay," and stole the watch. The store detective saw him, had him arrested, and Harold went to the Juvenile Court for his court hearing. This was Harold's first offense. What do you think should happen to Harold?

Story II

William was 13 years old. When he was 10 and 11 he was arrested for purse snatching. William stayed with his great aunt, who was old and had a hard time keeping tabs on where William went. William and his friends went downtown one Saturday. They saw a jewelry store and went in to look at watches. William said he would steal a watch if his friends looked out for him. The detective saw William take the watch and had William arrested. William had to go to Juvenile Court for his court hearing. What do you think should happen to William?

Use these two stories to initiate discussion of juvenile court processes. Have the students tell what steps would happen after the store detectives saw Harold and William. Then have them develop a set of questions about juvenile court procedures and personnel which would help to make decisions about the two boys. Invite a juvenile court staff member to come in and answer the students' questions. Be sure some questions deal with all the options besides imprisonment which the court uses to help with the "care, protection, welfare and education" of the child.

Then, have students role play the booking process, the detention hearing, the adjudicatory hearing with witnesses, and the dispositional hearing. Students who are role playing social workers may wish to make up family and neighborhood circumstances to include in a social investigation to recommend a rehabilitation program for Harold and one for William.

(See Objectives 0.1, 0.2, 0.5, 0.9, 0.10, 0.12, 1.3, 1.7, 6.3, and 6.4.)

- 26 -

THE DECISION IS YOURS — CIVIL OR CRIMINAL CASE?

Stage or pose a variety of situations such as those below:

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1. John Dade robs a savings and loan office with the loss estimated at several thousand dollars. Mr. Dade was apprehended by the police two days later and brought to trial.

2. While driving her car, Mrs. Wilson is struck from behind by another car going at a high rate of speed. Extreme damage was evident in both cars, and Mrs. Wilson complained of severe neck and back pains. Mrs. Wilson's doctor verified this injury, and she brought suit against the other driver.

Have students indicate whether the case is civil or criminal or both, and have them give their reasons. (Situation 1 above is an example of a criminal case. Situation 2 is clearly an example of a civil case and perhaps also a criminal case if the other driver was exceeding the speed limit or driving recklessly.)

(See Objectives 0.1, 0.5, 0.7, and 3.5.)

- 27 -

WHERE'S THE LAW?

From a series of slides or pictures, the students will select those which illustrate *rules* and those which illustrate *laws*, clarifying the meaning of the two terms. (See the box below for suggestions of pictures.) The list offers ideas about the kinds of pictures that may be used to develop the concepts of rules and laws. Some pictures that have no visible sign of rules or laws have been included as a means of making sure students don't see rules and laws in every situation. Others leave room for doubt to encourage discussion. You may want to take your own pictures or ask children to bring pictures which can be used as illustrations. You may also want to have students search for pictures and mount them for this activity.)

(1) A dog on a leash
(2) An auto license tag
(3) Bagging leaves
(4) Stop sign
(5) Parking "for customers only"
(6) Children playing ball
(7) Family eating dinner
(8) Voting machines or voters' registration
(9) Parking meter
(10) Young man on a motorcycle
(11) Children watching TV
(12) Classroom showing children raising hands
(13) Safety belts in automobile
(14) Children going to bed
(15) Children playing in street
(16) Children crossing at school
(17) Children doing homework
(18) Football game
(19) Adults drinking beer
(20) Factory pollution
(21) Library
(22) Drivers' license
(23) Marriage license bureau
(24) Cigarette machine
(25) Income tax office
(26) Grade A meat sign
(27) Crowd at a picnic (no evidence of rules or laws)
(28) Children in raincoats (no evidence of rules or laws)
(29) Securities check of baggage at airport
(30) Loan department at bank
(31) Lunch line at school cafeteria
(32) Group eating popcorn (no evidence of rules or laws)
(33) Cashing check at grocery store
(34) A man working in his garden (no evidence of rules or laws)
(35) Child working in grocery store

The exercise is probably most effective when the introduction is kept to a minimum. The task in the first run of slides is to distinguish between examples of rules and laws, discussing the meaning of the words "rules" and "laws". Non-examples may be included to assure that students will not see rules and laws in every situation.

In a second showing, have students look for examples that apply to certain groups and not to others. During the discussion encourage students to make additions or changes in their definitions of rules and laws.

After the second run of slides, ask students to identify these pictures that stood out most in their minds and explain why they seem to be the most vivid examples of rules and laws. Discuss why these are needed, giving examples of problems that may have led to the adoption of the rules and laws.

Select several examples for a discussion of what might happen if these rules or laws were abolished. Ask for volunteers to role play some of their predictions.

(See Objectives 0.1, 0.3, 1.1, 1.2, 1.3, 1.6, 1.7, 1.8, and 2.1.)

- 28 -

BRAINSTORMING

Students are each given a paper clip. Ask them to brainstorm uses of the clip. Encourage first-thought statements and discourage evaluative, judgmental statements.

Then, ask them to brainstorm their freedoms. This could be followed by priority listing by small group consensus. Finally, the whole class could try to see if they can agree to a priority listing. It is likely that they would be unable to do so.

The brainstorming of responsibilities could be handled in a similar manner.

(See Objectives 0.1, 0.12, 9.1, and 9.6.)

- 29 -

WHAT IS A POLICEMAN?

Give the class paper, and ask them to draw a picture or cartoon of a policeman, as they think of him. (Put drawings on board and have each child describe what he drew and why.)

Ask questions of the class, such as: "What kind of a person becomes a policeman?", "Do you know any policemen?", "Could you imagine your father or older brother being a policeman? Why or why not?" or "Could you ever see yourself as a policeman?"

Tell class you are going to show them a filmstrip about a typical policeman. A useful sound filmstrip for that purpose is "Law in a Democracy: Enforcing the Law, Part I" (Guidance Associates). Discuss the pictures and ask the group to make comments. (Brief explanation of each slide will accompany slide presentation for teachers convenience.)

The following activities could be used before and/or after slide show:

1. Write a paragraph as though you were a policeman, and how you might react in the following situations (these situations may also be subjects for role playing):

a. Your child comes home crying because his classmates have called you a "pig" or "fuzz."

b. You are heckled by a group of kids while making an arrest.

c. A suspect has threatened to "get you" for arresting him.

d. You are called to a burglary, and find that the suspect is a close friend or relative of yours.

2. Write a paragraph in the first person, explaining why you became a policeman, or what it's like to be a policeman.

3. Have each child read his or her paragraph to the class, and discuss.

(See Objectives 0.1, 0.10, 1.6, 1.7, and 2.8.)

- 30 -

SCHOOL IMPROVEMENT CAMPAIGN

Students could conduct a campaign for the improvement of the school. (To avoid negative experiences for students, this activity should have the support of the school's administration before it is started.)

A teacher could work with student committees to determine which rules should be changed because they are deemed unnecessary in the present, because they create more problems than they solve, or because they do not accomplish their purpose. As the committees identify new rules needed, old rules to be revoked, and modifications in current rules, they should consider whether changing the rules will improve the school, making it a more pleasurable place to live and learn. They will also need to determine what strategies are likely to be productive in bringing about the desired changes. The strategies will, of course, depend upon which persons or groups have the authority to make the specific changes proposed (student council, faculty, principal, school board, superintendent, State Department of Elementary and Secondary Education, state legislature, etc.).

The results of the project should be discussed. If students are able to effect changes in the rules, they should plan how to help the changes be supported by students (speeches, posters, jingles, etc.) and the school's faculty. If students were unable to bring about the changes they desired, the students should discuss (a) why changing rules (laws) is not always easy, (b) whether they still believe their proposed changes would have been changes for the better, and (c) how they might be more effective in the future in changing rules.

(See Objectives 0.1, 0.4, 0.13, 0.14, 1.1, 1.3, 1.4, 1.5, 1.6, 2.2, and 2.11.)

- 31 -

GILBERT AND SULLIVAN'S *TRIAL BY JURY*

The teacher could talk with the students beforehand about the basic right of a speedy and public trial by an impartial jury. In the same session and/or a following one play Gilbert and Sullivan's *Trial by Jury* or have the students attend a performance if one is available. Then, discuss the trial using questions like these: "How does the trial in the operetta compare to a trial today?", "Would they like such a trial for themselves?", "Did they feel it was fair?", "Was Gilbert and Sullivan making fun of the legal process of their day?", or "If so, was this a way in which they could get laws changed?"

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The above activity could be an introductory activity in the study of trial processes. If so, students should be encouraged to answer questions like those above from ignorance, following which the class could be led to consider, "How can we learn how trials really work? How can we learn if the ideas we expressed were accurate?" Films like *The Story of a Trial* could be shown, an attorney could be invited to visit class to answer the students' questions, students could read about trials in reference books, or students could take a field trip to the courthouse to observe court in action.

The activity could also be used toward the end of a unit on trial procedures with the students being asked to note how the trial in the operetta resembles and differs from trial procedures in the United States today. In the process of the analysis and discussion, it is important that children are encouraged to enjoy the humor of the operetta.

(See Objectives 0.1, 0.5, 0.8, 3.2, 3.3, and 3.10.)

- 32 -

KALEIDOSCOPE OF FEELINGS

The teacher introduces the unit by discussion of the importance of various court decisions and their effect upon people's lives. (Examples: committing a student to a juvenile detention facility or foster home, taking land from individuals to build a dam or a highway, the draft law).

Show a film or filmstrip or one of the following films or film-strips: *The Bill of Rights In Action: Due Process of Law* (Encyclopedia Britannica), *Speech and Protest* (Churchill Films), *Search and Privacy* (Churchill Films), *The Bill of Rights In Action: Freedom of Religion* (Encyclopedia Britannica), *Our Basic Civil Rights* (Coronet Films), *Sense of Responsibility* (BFA), *Geoffrey's Case* (Missouri Institute for Justice, Inc.), or *But It Isn't Yours* (Guidance Associates).

Have the students pick colors (charcoal, tempra, crayons, colored chalk) and use a free form type of art to illustrate what emotions they feel as the film progresses.

Display and discuss the colors used. (Red for anger; black for despair; blue for despondency; yellow for happiness). Do we associate certain colors with penal institutions? With court rooms? With freedom? With moods? Can these moods determine our actions?

(See Objectives 0.1, 0.8, 0.9, and 0.10.)

- 33 -

GOOD GUYS VS. BAD GUYS

Discuss methods of cartooning or caricaturing with the class. Let each student have paper and the media they choose to draw with (pencils, crayons, charcoal, or pastels). Tell

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them they are to choose one or more persons from the film to be shown to cartoon or caricaturize.

Show the film, *The Bill of Rights In Action: Story of a Trial* (Encyclopedia Britannica), or any appropriate film. Exhibit the artwork. Discuss: Why did they pick the particular person they chose to portray? Did the persons they disliked look worse than the persons they identified with? Do we sometimes tend to judge people by their looks? Can news media artists unduly influence the public to prejudge people?

(See Objectives 0.1, 0.5, and 0.10.)

- 34 -

LOCAL LAWS THAT AFFECT STUDENTS

Discuss the type of government your city has. Visit the chief official. Ask him to talk about topics as: bicycle laws, pet laws, and traffic laws. Discuss why such laws are needed.

(See Objectives 0.1, 1.1, 1.3, 1.6, and 2.2.)

- 35 -

DIFFERENT RESPONSIBILITIES FOR DIFFERENT POLICEMEN

Invite a member of the Missouri State Highway Patrol to talk with your class about his work. (Either contact the highway patrol in your area or write Public Relations, Missouri Highway Patrol, Jefferson City, Missouri 65101.) Also invite a local police official to your class to discuss his work. They may be invited to come on the same day or on different days. Have students compare the work and areas of responsibility of the highway patrolman to those of the city policeman. (Variation: If possible, also invite FBI official.)

This activity could be used to show different domains of responsibility of law enforcement officials, which have their basis in law.

(See Objectives 0.1, 0.5, 2.8, and 4.3.)

- 36 -

ASSUMING RESPONSIBILITY

Discuss responsibilities of teachers and pupils. Allow the students to decide which privileges and responsibilities they think they can handle. Pair responsibilities and privileges. A felt or yarn tree could be made to serve on a large bulletin board to represent privileges pupils want. Felt leaves may represent specific responsibilities pupils will need to assume.

(See Objectives 0.1, 0.13, 0.14, and 9.6.)

- 37 -

BICYCLE RULES AND LAWS

A policeman could be invited to school to explain rules for bicycle operation. Some schools cooperate with the police department in licensing of bicycles at the schools. An important part of the discussion should be to explore the purposes for the rules, considering, perhaps, what would result if the rules were not obeyed.

(See Objectives 0.1, 0.4, 0.5, 1.1, 1.3, and 1.6.)

- 38 -

OUR BASIC RIGHTS

Examine with pupils copies of the Bill of Rights from the U.S. and/or Missouri Constitutions. Explain that these laws tell us what our freedoms are, but what do they mean? Have students translate the document(s) into their own words. Ask students if they could think of any other rights not listed that they know Americans have (e.g., right to travel and move from city to city and state to state without passports, right to choose own job, right to marry whom one pleases, etc.). Ask students how they could clearly and entertainingly show parents and younger students what they have learned about the Bill(s) of Rights.

(See Objectives 0.1, 1.1, and 9.1.)

- 39 -

MAKING GROUP DECISIONS

The class might act out the role of a decision-making body in making decisions which affect the group, such as planning a project or field trip. The class should pay close attention to proper procedures, perhaps using *Roberts Rules of Order* or specific elements from that book. After students are effective in operating under those rules, discuss whether or not such rules are helpful in making decisions.

(See Objectives 0.1, 0.4, 0.13, 0.14, 1.1, 1.3, and 1.6.)

- 40 -

KNOW YOUR LAW QUIZMO

Make a list of 24 or more law-related words used for your grade level (see glossary in 1975 edition of *Due Process of Law: A Teaching Resource* for additional words). Run the list off on a ditto. Each student will need a list. Have the students cut out the words. On an

8" square sheet of paper have the students draw 25 equal squares (5 across and 5 down). In the center square print the word "free". The students can then paste at random the words they cut out in the remaining squares.

Example:

Judge	Bill of Rights	Lawyer	Hung Jury	Felony
Jury	Habeas Corpus	Search Warrant	Libel	Civil Law
Yes	No	FREE	Circuit Court	Statute
Bail	Tort	Misdemeanor	Prosecuting Attorney	Criminal Law
Criminal	Common Law	U.S. Supreme Court	Defense Attorney	Precedent

On a 3 x 5 card the teacher should write a brief comment or word relating to one of the 24 words on the list. It is necessary to have a card for each word. Cut out several small 1/2" squares to be used to cover words on the quizmo boards. Play like bingo with teacher reading comments from his or her cards.

(See Objectives 0.1, 1.8, 2.8, 3.2, and 4.3. The activity could also be adapted to Objective 5.5.)

- 41 -

AN EXPERIMENT IN ANARCHY

The teacher inustructs the students that in the following experiment there will be no rules other than for safety and decency. Start the experiment letting student do whatever they want. The teacher gives no advice and solves no conflicts since there are no rules. When the teacher has taken as much as he or the class can stand, stop the experiment. The discussion should explore such matters as reasons for rules, situations requiring rules, and various time periods require different rules.

(See Objectives 0.1, 0.4, 1.2, 1.3, and 1.6.)

- 42 -

NATURE OF MAN

Assign students to research the basic philosophies of Locke, Hobbes, Rousseau, and Voltaire. Volunteers or selected students may then present a panel discussion for the class on these philosophies and solicit questions and comments from the class. Discussion of arguments for and against controls (rules and laws) upon mankind should result.

(See Objectives 0.1, 0.5, 1.3, and 1.6.)

- 43 -

YOU WERE THERE

Divide the class into groups. Each group should prepare and perform mock television shows using the "You Were There" format focusing on specific Supreme Court decisions. Students would research the case(s), examining the issues involved and the arguments of the attorneys. Their shows should include interviews of the attorneys, the defendant, and members of the general public.

(See Objectives 0.1, 0.3, 0.4, 0.5, 5.5, and 5.8.)

- 44 -

OUR TOWN

Using oil cloth or mural paper approximately 6' x 9' ask students to design and create a model town. Initial steps include: (a) drawing a map of streets and other physical features (b) transferring to large oil cloth or mural paper, (c) constructing miniature houses and buildings, (d) drawing lots for ownership of specific parcels of property, and (e) drawing lots for particular occupations, unless the occupation is obvious based on what was drawn in (d). A copy of the document explaining how the students' local community is governed could be used to research questions about the power given to local government agencies and about the community's laws and services. Discuss roles various groups and agencies would play in making, changing, and enforcing laws. Propose procedures and laws that would improve some conditions, predicting consequences of such changes. Have students discuss such proposals from their particular perspectives as determined by what they drew in (d) and (e) above.

Confront the students with a dilemma, such as taking some property to widen a street for better fire protection or location of a highway. Have students propose solutions, debate the issues, and try to find a solution which is fair to most people.

(See Objectives 0.1, 0.3, 0.4, 0.5, 0.6, 0.7, 0.8, 0.9, 0.11, 1.1, 1.3, 1.4, 1.5, 1.6, 1.7, 2.2, 2.7, 2.8, 2.10, 2.11, 2.13, 3.1, 3.2, 4.1, 4.3, 7.2, 7.3, 9.4, and 9.5.)

- 45 -

ISSUES IN THE NEWS

Ask students to find news items reporting conditions that could lead to tension or conflict between groups. They should collect for a scrapbook clippings that present different points of view. Students should:

1. describe the issue(s) involved.
2. explain arguments presented by different sides and alternative solutions proposed.
3. propose procedures and laws that would help resolve the problem in a fair manner.

Other tasks students could be asked to do that would grow out of this assignment include:

1. Matching arguments with particular points of view.
2. Identifying what values underlie different points of view (freedom, equality, domestic tranquility, order, justice, etc.).
3. Developing a timeline of events related to the conflict, or developing a set of pictures illustrating key scenes from the developing story. At various times, the teacher could ask students, "What role is law playing in these events?"
4. Students could probe what roles are being played in the conflict by government officials, by lawyers, by the courts, by the city council, etc.
5. Ask students how may law be used in this situation to promote peace and justice?

(See Objectives 0.1, 0.2, 0.3, 0.4, 0.5, 0.6, 0.7, 0.8, 0.9, 0.10, 0.11, 0.12, 1.3, 1.4, 1.5, 1.6, 1.7, 2.4, 2.6, 2.7, 2.8, 2.9, 2.11, 2.12, 2.13, 2.14, 3.1, 4.1, 4.3, 4.5, 9.1, 9.4, and 9.5.)

- 46 -

MOBILES

Divide the class into groups. Assign to each group the construction of a mobile. Mobile suggestions are: (a) legal terms, (b) sketches of court scenes, (c) state court organization, and (d) federal court organization.

Materials: coat hangers, string, short sticks, construction paper, felt pens, magazines, and drawing ink or charcoal.

Stage a class meeting discussion on the completed mobiles.

(See Objectives 0.1, 3.2, 3.6, and 4.4.)

- 47 -

COMPARE THESE JAILS

Have students read *A Day In The Life of Ivan Denisovich*, by Alexander Solzinytzin.

Then have them view the film, *Don't Go To Jail In Missouri* or *The Insiders*, and have them investigate how Missouri jails operate using other sources.

Probing questions:

1. Compare the conditions under which people in the two prisons live.
2. Compare how the prisoners spend their time.
3. There are reasons why people are placed in jail. How would you describe the purposes(s) of incarceration in the USSR? The purposes in the Missouri?
4. What effect does his life in prison have on Ivan? What effect does it have on the Missouri prisoners? Can you explain how the author of each shows these effects?
5. Compare the chances of getting out of the two jails legitimately.

(See Objectives 0.1, 0.2, 0.5, 8.5, 8.6, and 8.12.)

- 48 -

COURT HIERARCHY AND SHOE BOXES

Obtain shoe boxes for your classroom, and as students learn the names of State and Federal Courts, have them label each box with the name of one court. The correct number of judges and jurors (if that court holds jury trials) can be drawn on the box as stick figures. The boxes can then be piled in the correct layers to demonstrate the court hierarchy for Missouri and another pile for the Federal Courts.

Thereafter, the teacher can write hypothetical cases and ask the students to place them in the correct box for the court having original jurisdiction. This can be done as a team game, like a spelling bee or a TV quiz show. Also, students can bring in newspaper clippings of trials or law-related incidents to use in the game.

The concept of appeals can be developed by fastening arrows or pieces of colored string from the trial court to the appropriate appeals court.

It is difficult to get across the idea that the Appeal Court *does not* retry the facts of the cases it hears. It can be explained as a trial of the judges' actions in the original hearing. Try role playing an incident involving school discipline in which the teacher acts as the judge first in a fair trial with correct use of school rules and then in an unfair trial with a bad use or application of rules. Use the same facts. The conduct of the judge and his/her use of the rules is what justifies the appeal. Also point out the importance of having a record of what was said in a trial. Ask the children if they can remember how "the judge" acted in the unfair trial. The differences in what they can recall will show the value of having the written transcript.

(See Objectives 0.1, 0.5, 4.2, 4.3, 4.5, and 4.6.)

- 49 -

PEOPLE POWER

Ask students to find out what services are provided by local, state, and federal governments (such as education, welfare, safety, highways, postal service, etc.) Suggest that children make a scrapbook of news items related to such services which illustrate how citizens attempt to influence decisions, how city officials pressure for influence of decisions by state officials, etc. Students might want to conduct interviews in their neighborhoods about complaints of such services.

Select a current issue about services of special interest to the students. You may make taped interviews of invited guests with opposing viewpoints to discuss the problem. Encourage students to explore means they have of influencing decisions about the issue.

(See Objectives 0.1, 0.5, 0.14, 2.2, 2.7, 2.8, 2.9, 2.11, 2.13, 3.1, and 3.11.)

- 50 -

RIGHTS AND RESPONSIBILITIES OF SPORTSMEN

Write the Conservation Commission (2901 North Ten Mile Drive, Jefferson City, Missouri 65101) and ask for the pamphlets, "Restrictions and Rights of the Missouri Sportsman" and "Liability of the Landowner to the Sportsman." Use these pamphlets as the resource materials for a lesson or series of lessons on rights and responsibilities of the sportsman.

(See Objectives 0.1, 0.2, 0.3, 0.14, 1.1, 1.3, 1.6, 1.7, 9.4, and 9.6.)

- 51 -

THE MAKING OF CLASSROOM RULES

At the beginning of the school year, work with students in establishing classroom rules or guidelines for the semester: the "Do's" and "Don'ts" of daily routine and penalties for nonconformance. Consideration of reasons for the rules and guidelines should be emphasized. In addition, the rules or guidelines should be evaluated and reevaluated from time to time and modified if desirable.

(See Objectives 0.1, 0.4, 0.13, 0.14, 1.1, 1.3, 1.4, 1.5, 1.6, and 2.2. See also Activity 62, which also pertains to students making rules.)

- 52 -

CONSERVATION AND LAW

Ask a conservation agent to visit the classroom to explain and discuss laws designed to conserve wildlife and forests. He could also be asked to discuss what laws are on the books that conflict with conservation principles, as well as some problems invloved in enforcing conservation laws. Such a discussion is ideal to follow a unit on conservation. In addition, the agent may be an excellent source of ideas for the teacher on appropriate films, magazines, books, and filmstrips related to law and conservation.

(See Objectives 0.1, 0.2, 0.3, 0.4, 0.5, 0.11, 0.12, 1.1, 1.3, 1.4, 1.5, 1.6, 1.7, 9.4, 9.5, and 9.6.)

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MISSOURI'S WILD LIFE CODE

Ask the game warden from your community to visit your class to explain and discuss the Wild Life Code for the State of Missouri. This may follow a unit on conservation. The State Conservation Commission (2901 North Ten Mile Drive, Jefferson City, Missouri 65101) has many materials to assist you.

(See Objectives 0.1, 0.2, 0.3, 0.4, 0.5, 1.1, 1.2, 1.4, 1.5, 1.6, and 1.7.)

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LAW AND POLLUTION

Design a student-made bulletin board on types of pollution. Collect data on water, air, and noise pollution. The Conservation Commission is a good source of materials. Have special reports presented based on the collected material. The reports should include an examination of how law has been used and could be used to reduce the specific kinds of pollution. Make posters on pollution either individually, in pairs or in committees. Use these posters as a basis for discussions. Students could be asked to take sides pro and con related to specific laws to reduce pollution using a cost/benefit kind of analysis or examining the legislation from a conflicting values perspective (i.e., liberty in conflict with the general welfare).

(See Objectives 0.1, 0.2, 0.3, 0.4, 0.5, 0.6, 0.7, 0.10, 0.13, 0.14, 1.1, 1.3, 1.4, 1.5, 1.6, 1.7, 9.3, 9.4, 9.5, and 9.6.)

- 55 -

SIGNER BEWARE!

1. Teacher should write the following sentence on the top half of a piece of blank paper, "I promise to pay (name of teacher) $10 tomorrow morning." Do *not* let the students see you do this. Fold the paper so the sentence is covered up. Pass it around your class, asking the students to sign their names. After it has been around, open up the paper and read the "promise to pay" which the students signed. MORAL: *Never* sign your name without looking and reading thoroughly.

2. Role play a contract for doing car repairs (or any machine). Get a copy of a mechanic's order form with a big space for listing repairs needed, and a line for signature on the bottom. Ask a student to tell you some repairs usually needed on a car and list them. When about 2/3 of the page (or less) is full, ask student to sign his name as he would on any service station order. Then teacher starts filling in empty part of section where repairs are listed with other repairs. Show students need for drawing lines across blank parts of a repair contract.

(See Objectives 0.1, 1.1, 1.3, 1.5, and 3.11.)

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BRIEFING COURT DECISIONS

The Students should brief Supreme Court decisions using the "Case Study Sheet" reproduced on the next page. These may be discussed in class discussion, or opinions may be exchanged among students who agree or disagree with the decisions, concurring or dissenting. Decisions may be made by groups of nine (little Supreme Courts) or by smaller groups.

(See Objectives 0.1, 0.2, 0.3, 0.4, 0.5, 0.6, 0.7, 5.5, and 5.8. See also Activity 211, which is similar to this activity.)

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THE COURTS ARE FOR EVERYONE

In a class discussion, discuss the following questions:

1. What happens when children are disobedient at home?

2. What happens when they do not respect the rights of other members of the family?

3. Who decides what is to be done?

4. Who makes such decisions at school?

CASE STUDY SHEET

Student's Name ____________________
Course ____________________
Date ____________________

Case name ____________________
Court ____________________
Decision date ____________________

Facts:

Legal Issues:

Decision:

Court's Reasoning:

Student's Comment:

5. What happens to grown-ups who break laws or do harm to others? (It would be helpful to have a collection of newspaper pictures and articles already prepared that relate to this activity.)

Following the above discussion, invite a parent or teacher who has served on a jury to talk to the class about methods of carrying on courtroom trials, or invite a lawyer to the class to be interviewed. Have children dramatize a courtroom scene or trial. A simple costume for the judge will add to the effect. Have children make pictures of their idea of court.

(See Objectives 0.1, 0.3, 0.14, 1.1, 1.3, 3.1, 3.2, and 3.9.)

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CHANGING SUPREME COURT INTERPRETATIONS

Examine Supreme Court decisions in selected areas and notice how they have changed over time. The particular area(s) selected will depend upon the specific course or unit. Possible topics include freedom of speech, freedom of religion, property rights, rights of the accused, right to vote, school desegregation, the power of the federal government, etc. Pay particular attention to the kinds of reasons the court uses and how those reasons change. Ask students to suggest hypotheses for why the court changes its positions on occasion.

There are a number of books useful in such inquiry. These include:

Leonard F. James. *The Supreme Court in American Life*. Glenview, Ill.: Scott, Foresman, 1971.

Oregon State Bar. *Liberty and the Law: Case Studies in the Bill of Rights*. Englewood Cliffs, N.J.: Prentice-Hall, 1968.

Robert H. Ratcliff, General Editor. *Great Cases of the Supreme Court*. Boston: Houghton Mifflin, 1971.

______________ . *Vital Issues of the Constitution*. Boston: Houghton Mifflin, 1971.

Carl Brent Swisher. *Historic Decisions of the Supreme Court*. New York: Van Nostrand (Anvil Books), 1969.

Rocco J. Tresolini. *Case Studies in Civil Rights*. Philadelphia: Lippincott, 1968.

Richard K. Tucker, *et al. Liberty Under Law: Case Studies of the Basic Principles of The Bill of Rights*. Middletown, Conn.: Xerox Education Publications, 1969.

(See Objectives 0.1, 0.2, 0.3, 0.5, 5.5, 5.8, and 9.4.)

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FREEDOM DOCUMENTS

Have students examine such documents as these: Magna Carta, Mayflower Compact, Declaration of Independence, Articles of Confederation, Bill of Rights, and the Emancipation Proclamation.

Ask them to restate the documents in their own words and/or to show their meaning using cartoons. Another possible activity is to divide the class into two types of groups: One type of group will demonstrate a major aspect of the document by role play. The other group will demonstrate the opposite of what that aspect of the document stands for. Following such role play, discuss with students what are some implications of the document dealt with and what the document stands for.

(See Objective 0.1, 0.9, 1.3, 2.4, 2.12, 7.3, 7.4, 7.5, 9.2, and 9.7.)

- 60 -

ARE MINORS COMPETENT TO ENTER INTO CONTRACTS?

The teacher introduces the subject of contracts. A contract is enforceable when it is made by two or more persons who can give sane and intelligent assent. Minors are not considered competent.

1. Have students read Chapter 29, "Principles of Consumer's Law," in H. Jelley and R. Hermann, *The American Consumer* (McGraw Hill, 1973), pp. 43-45 of *Youth and the Law* (Justice in Urban America Series, Houghton Mifflin Co.), Chapter 2 of *Handbook of Everyday Law* by Martin J. Ross (Fawcett), or other information on contracts and minors.

2. The students will discuss the advantages and disadvantages of a minor being considered legally incompetent.

   a. There is a trend now for a common lowering of the age of consent or majority. Is this an advantage?

   b. Can you as a juvenile, void (cancel) most contracts you make because you are assumed not to have full maturity of mind and judgment?

   c. At what age is a person capable of "looking out for himself or herself" in your state?

3. Have a lawyer visit the class and discuss contracts.

(See Objectives 0.1, 0.5, 1.1, 1.2, 6.1, and 6.2.)

- 61 -

RESEARCH REPORTS ON CONSTITUTIONAL AMENDMENTS

Have students choose U.S. Constitutional Amendments to research and report on their

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relevance to society. In their report they could be instructed to show how things would be different if the Amendment were not ratified. Reports could be oral or written; they could be skits, cartoons, or comic strips. There are many ways students could demonstrate what they have learned in such a way as to cause others to be interested in their findings.

In studies of Missouri Government similar reports could be made relating to the Bill of Rights in the Missouri Constitution.

(See Objectives 0.1, 1.1, 1.3, 1.6, 1.7, 2.4, and 9.1.)

- 62 -

SUBCOMMITTEE TO DEVELOP CLASSROOM RULES

The class could be divided into groups of four or five at the beginning of the year. Designate a group leader for each group or have each group select one. Have the groups discuss rules pertaining to classroom behavior. The groups must decide on rules to be used, tell why they think these rules are necessary, and decide what types of punishment should be used if the rules are broken.

After fifteen or twenty minutes each group should report on their discussion. Rules for the classroom should be organized, written down, and a copy given to each student. This way the student should see why rules are necessary and realize what can happen when rules are bad or are not followed. If any rule is found not to work, the class could discuss why and what should be done about it. The rules, of course, would need to be subject to teacher approval and would have to conform to established school rules.

This understanding of rules should also carry over and give understanding of rules and laws which are set up in the community.

(See Objectives 0.1, 0.4, 0.9, 0.10, 0.13, 0.14, 1.1, 1.3, 1.4, 1.5, 1.6, 2.11, 8.3, 8.9, and 9.6.)

- 63 -

"WHAT IS LAW?"

The Pledge of Allegiance is given each morning to start the school day. Following it will be a discussion on why it is necessary to have laws in our country. Questions such as the following are asked:

1. What is law?

2. Why can't everyone do just as he pleases?

3. What do we mean when we say, "I pledge allegiance to the United States of America?"

4. Why do we need to protect our country?

5. Why should we try to be good citizens? What does it mean to be a citizen? Are we all citizens?

6. Why do some people have to go to jail?

7. What do we mean by federal governement?

8. What do we mean by federal laws? Who made these laws? How long ago? Why must we still obey them if some of these laws are so old?

Following this lesson on federal laws, the second lesson would concern state and local laws. The third and last lesson would pertain to school rules or "laws" and also rules which help us to have a better classroom.

(See Objectiv 0.1, 1.1, 1.3, 1.6, 1.8, 8.3, 8.9, and 9.6.)

- 64 -

BUILDING BLOCKS, RULES, AND THE LAW

A table with building blocks will need to be in the center of the room. Allow one child to go to the table to begin building a house. After a while, let others go to the table and join until everyone is trying to build.

This activity should point out that as long as there was only one person at the table, there was no conflict. When other people came to play with the blocks, however, rules are needed to insure fair treatment for all persons.

Discussion should lead to rules of conduct expected in the classroom, playground, at home, our traffic laws, etc.

(See Objectives 0.1, 1.1, 1.3, 1.5, 1.6, and 1.7.)

- 65 -

"WHAT IF"

Ask students the following questions, and have them explain what they think our society would be like if the following occurred:

What if we didn't have any watches or clocks?

What if there were no adults in the world — only children?

What if there were no teachers or principals at school?

What if there were no policemen?

What if there were no traffic signals, stop signs, or speed limits?

What if there were no laws against stealing or killing?

What if there were no pure food and drug laws?

What if there were no laws requiring you to attend school?

Etc.

Try to help the students arrive at the conclusion that rules and laws are needed to protect people's property, safety, health, and freedom.

This activity lends itself to role play, discussion, and/or skits.

(See Objectives 0.1, 1.3, 1.6, 8.3, and 8.9.)

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CLEAN WATER

A

Discuss with the students the part citizens play in environmental protection. Study the opportunities for the public to participate in a meaningful way in decisions of government. Examine the new Water Pollution Control Act of 1972. Use the book *A Citizen's Guide to Clean Water* (address in bibliography) or the pamphlet "The Federal Water Pollution Control Act Amendments of 1972."

B

Study the background on Pollution Laws. Look at water quality standards. Study your local waste treatment plant and complete the Citizen Action Checklist on page 30 in the pamphlet "Clean Water, It's up to You" (address in bibliography).

(See Objectives 0.1, 0.2, 0.3, 0.4, 0.5, 1.3, 1.6, 2.2, 2.11, 9.3, 9.4, and 9.5.)

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COMMANDMENTS

Opening statement: Throughout our lives from our early childhood, we are given commandments to strive to fulfill. Often the fulfillment of the commandment is reinforced through the year by punishment for failure to obey. However, in everyday life commandments are frequently left unstated, though their force is clearly felt and profoundly influence our choices, decisions, and behavior. It is important we recognize and clarify those commandments by which we live.

1. List 10 commandments of your family.

2. List 10 commandments of your school.

3. List 10 commandments of your group of close friends.

4. List 10 commandments by which your teachers live.

5. List the 10 commandments by which *you* would *like* to live.

Follow-up: Check yourself day by day for a week. Are you proud of the commandments by which you are living?

(See Objectives 0.1, 0.4, 0.11, 0.12, 1.1, and 1.3.)

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FIRST AMENDMENT RIGHTS AND THE JUVENILE CURFEW

Role play:

Five or 6 students as juveniles standing outside a doughnut shop talking together after midnight on a weeknight.

Two students as police officers come up to the group and order them to go home or else be taken to Juvenile Detention Center for violating the curfew law.

One student in the role of the doughnut shop manager tells the police that the juveniles were just talking there causing no trouble.

Have class read the First Amendment and the curfew ordinance of their community. Then discuss using probing questions like these that follow:

1. In role play were students being denied freedom of speech?

2. What about their right to assemble peaceably? Were they being denied that right? If so, is the curfew law a violation of the Constitution?

3. Who passed the curfew law? Should it be considered more necessary for juveniles to be prohibited from assembling peaceably at night than adults? Why? (To adequately answer this question, it may be desirable to involve parents, police, juvenile officials, or other adults in the discussion.) Do you think those are valid reasons for limiting the right of young people to peaceably assemble late at night and in the early hours of the morning?

4. Would students sign and circulate this petition:

"We the undersigned respectfully ask that the city's curfew ordinance for minors be repealed." What are their reasons pro and con? Students may debate the topic.

(See Objectives 0.1, 0.2, 0.4, 0.5, 0.6, 0.10, 0.14, 1.1, 1.2, 1.3, 1.4, 1.6, 1.7, 2.2, 2.11, 6.2, 9.4, and 9.5.)

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"THE GAME OF NO-RULES"

One Way to Play the Game

Using a game for review of course content, explain to students that:

1. Only children having brown eyes may participate. Brown-eyed students should watch to comment on the game later.
2. There will not be the conventional rotation of turns. Participants may take as many turns as they like whenever they choose.
3. Standard rules of the game will be abandoned.

After playing the game in this manner, discuss what happened. Was the no-rule game fair to all who played? Have students determine how the game should be played to insure fairness to each one. Relate this to the use of laws in society, including the United States Constitution, and discuss the rights and responsibilities of citizens in the classroom and in society. What role does law play to assure the rights of the individual in society? Then, play the game according to the rules which have been established to treat each student equally and fairly.

A Second Way to Play the Game

Divide room in 2 equal groups and just say, "Now, you're on your own". Then walk out of room on some pretext, soon chaos should be supreme. You may instead remain in room and be bombarded with questions to which you must reply evasively ("I'm not sure," etc.). Soon youngsters will find they aren't getting any where and will start organizing themselves. At this time they will be able to understand that to accomplish anything there must be some rules and regulations.

(See Objectives 0.1, 0.8, 0.9, 0.10, 1.3, and 1.6.)

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LAW AND STANDARD UNITS OF MEASURE

1. Discuss examples of ancient measurements (Examples of Anglo Saxon measurements for length include the *inch*, which represents the distance from the knuckle to the

thumb, the *cubit*, which represented the distance from the elbow to the tip of the middle finger, the *foot*, which represented the width of 16 fingers or 4 palms, etc.)

2. Discuss questions like these:

   a. How accurate were these measures?

   b. How is measurement used in our daily lives? (Do not limit to linear measures. Include also time, mass, light, electricity, etc.)

   c. Would the less precise systems of measurement used by early people make trade easier? Would they be fair to consumers?

3. List several objects in the room. Measure and record results using first the width of your palm (or some similar method) as a unit of measure and then the English and/or metric system using standardized units. Compare results. Which system is better?

4. Review concepts concluded from the activity. Students may become intrigued with ancient systems of measurement and may do some research for reports, posters, etc. Encourage them to investigate the legal basis of our current systems of measurement. Students could use encyclopedias, almanacs, and other references.

(See Objectives 0.1, 0.3, 0.5, 0.9, and 1.1.)

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PRESIDENTIAL ATTEMPTS TO INFLUENCE THE SUPREME COURT

1. Using the U.S. Constitution, review with your class the concept of separation of powers.

2. Show the film *The Constitution - Whose Interpretation* (Available from Missouri Bar, Jefferson City).

3. Discuss or debate the pros and cons of FDR's efforts to "pack the Supreme Court".

4. Have students select a President who has had the opportunity to appoint one or more justices to the Supreme Court and analyze whether or not he had tried to change the philosophy of the Court from conservative to liberal (or vice versa) to match his own philosophy.

(See Objectives 0.1, 0.2, 0.4, 0.5, 0.6, 0.7, 1.1, 2.2, 2.8, 2.12, 2.13, 5.2, 9.4, and 9.5.)

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JUSTICE UNDER LAW: THE GIDEON CASE

1. Ask the question, "Is protection under the law truly equal for all groups in America regardless of race, creed, national origin, or economic status?" List ways in which students may believe it is unequal.

2. Show film "Justice Under Law: The Gideon Case" (available from Missouri Bar in Jefferson City)

3. Ask Question 1 again. If students still believe protection under the law is unequal, ask how Gideon was an exception. Ask also how the legal system may be used to get more equality before the law using the Gideon case as an example? Students may examine other cases using news article and books on the Supreme Court to find how people have used courts to promote equal treatment under law.

(See Objectives 0.1, 0.2, 0.3, 0.4, 0.5, 0.8, 0.9, 1.3, 1.4, 1.6, 1.7, 2.4, 3.3, 3.7, 3.11, 4.5, 4.6, 4.8, 4.9, 5.5, 7.5, 7.6, 7.7, 7.8, 8.5, 8.11, 9.1, and 9.4.)

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"IS IT IMPORTANT TO FOLLOW RULES?"

1. Discuss with the children the question: If you break a rule and are not caught, are you still guilty? Discuss using real or fictional examples.

2. Discuss how one might be considered (or feel) guilty even if not caught.

3. Discuss also the ways it can hurt everyone when a rule is broken, even if the child is not caught.

4. Divide the children into groups of 3 and 4 to discuss certain rules in school and how breaking these rules can hurt everyone. Examples of rules and ideas to be used in the groups:

a. *Do not put your hands on the walls:* If the rule is broken, whether caught or not, the wall will eventually get dirty and ugly, and we will all have to look at a dirty wall even though not all are guilty.

b. *Do not run in the halls:* The child runs and falls, breaking a leg. The child pays with pain, parents must pay doctor bills, etc.

c. *Do not throw paper towels on floor in the bathroom:* A few children throw their paper on floor, then all children have to have a dirty bathroom. Extra time required by custodian.

d. *Milk is ordered for those that say they want milk and someone takes milk that did not* *order it:* Some child who was in the right by ordering milk must suffer because someone who did not order it took his.

5. Have the children make a poster listing rules of the school to be displayed in the room.

6. Have the children cut pictures from magazines showing children following rules of safety and children not following rules of safety to be displayed on bulletin board.

(See Objectives 0.1, 0.14, 1.1, 1.3, 1.6, 8.3, 8.9, and 9.3.)

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WHAT IF THERE WERE NO UNIFORM MATH SYMBOLS?

On chalkboard, flannel board, or with overhead projector, present assorted numbers. Using something other than the accepted symbols for mathematical operations make an open number sentence for students to answer (e.g., 36 ⊻ 4 ⇔ ☐).

Ask students why the question can't be answered? Then, use operative symbols and answer the question (36 ÷ 4 = 9). Explain that our society has accepted +, -, x, ÷ as symbols for addition, subtraction, multiplication, and division as rules in math. We recognize the symbols and know what they tell us to do with numbers. Ask what would happen if these symbols were abandoned? What would result if we did not use these symbols uniformly? Students make up several problems to illustrate the problem of no uniform symbols for the class to try to answer. Compare this to laws which are made for the protection of people. What are some rights and responsibilities we have as a result of our Bill of Rights and laws which govern us? Discuss what would happen if the laws which protect us were abandoned.

Another direction this discussion could take would be to ask next what the students think would happen if all other rules were fully non-uniform? For example, what could happen if rules at home would be unknown and would change often? What would happen if traffic signs and laws were changed frequently, would vary from block to block, and would be unknown to most drivers? Encourage students to think of many consequences and of the consequences of those consequences.

(See Objectives 0.1, 1.1, 1.3, 1.6, and 1.7.)

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TRAFFIC LIGHTS

Preparation. Students need no preparation. The teacher will need a picture of a policeman directing traffic on a corner with a police car included in the picture. Have one black rectangle, one red square, one yellow square, and one green square per child.

The Activity. Let the children do the talking. Teacher will only ask questions and direct the discussion in a positive way.

-What does a traffic light tell us?

-What does red mean?

-What does green mean?

-What does yellow mean?

-What happens when people don't obey traffic lights?

-Have students learn the following poem:

Red Light — Stop,
Yellow light — No.
Wait for the green,
And then you go.

-Students will round off the corners of the squares to make circles and paste them on the rectangle to make a stop light.

-Ask thought provoking questions such as — What would happen if colors on traffic lights were changed? What would happen if the city council decided that too much electricity was being used and suddenly turned off the traffic lights?
suddenly turned off the traffic lights?

(See Objectives 0.1, 1.1, 1.3, 1.4, 1.5, 1.6, and 1.7.)

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"IF NO ONE OBEYED RULES...."

Preparation. The students will need no preparation. The teachers will need to have on hand pictures which show various activities in the classroom.

Possible resource books:

Stover, Jo Ann. *If Everybody Did.* David McKay Company, 1960.

Bonsall, Crosby. *It's Mine! - a Greedy Book.* Harper and Row, 1964.

Leaf, Munro. *Manners Can Be Fun.* J. B. Lippincott Company, 1958.

Mill, Eleanor. *My Schoolbook of Picture Stories.* Holt, Rinehart and Winston, Inc., 1967.

Jackson, Kathryn and Byron. *Jerry at School.* Simon and Schuster, 1950.

Possible filmstrips:

What Would You Do? (Society for Visual Education, Inc., Chicago)

Jimmy Didn't Listen (Society for Visual Education, Inc., Chicago)

Working Together (Society for Visual Education, Inc., Chicago)

The Activity: The children will do most of the talking. The teacher will direct the discussion toward the objectives desired, asking questions like those below:

-Should we run or yell in the room? Why or why not? What if everybody did?

-Should we hang our coats up? Why?

-Should we put away things we get out? Why?

-Should we grab a toy when someone else is playing with it? Why not?

-Should we share our toys? Why?

-Should we push or hit? Why not?

-How can we help people to do what is right?

-Should we do anything to people who do what is wrong?

-What are some laws our parents have?

-What happens to our parents if they don't follow the law?

-Does everyone have to follow laws?

-What would life be like if nobody obeyed the law?

(See Objectives 0.1, 0.14, 1.1, 1.2, 1.3, 1.6, 1.7, 8.3, 8.9, and 9.3.)

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HAPPINESS IS ACCEPTING RESPONSIBILITY

Early in the year, when pupils have come to know each other and feel comfortable in their new situation, initiate a discussion among pupils as to what they want to be free to do without having to get special permission. (e.g., get materials, go to rest room, get a drink, go to an interest center, etc.) Then, ask them for what activities do they think they should need to get permission. What responsibilities will pupils need to assume if they get new rights and privileges?

When the group has decided on actions they will be responsible for, make booklets with these printed in manuscript. Pupils may illustrate the behavior with stick figures.

The class might prepare a calendar of each week. Each child will be assigned the routine tasks needed to be done in the classroom. Some examples may be: water plants, feed fish, pass out books or workbooks, pick up assigned class work, etc. The teacher may want the students to evaluate their performances in light of their responsibility to other class members. This can be done individually or in class discussion. Praise for good performance is a good approach to encourage dependability.

The class could prepare a "Responsible Citizens Box." When a pupil (or the teacher) notices someone acting in a responsible way, such as returning materials, showing considerate behavior for others according to goals the group has established, he writes that person's name on a paper and quietly slips it in the box. During sharing time, the names might be drawn out and the positive behavior revealed.

(See Objectives 0.1, 0.14, 9.3, and 9.6.)

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ORDER AT SCHOOL

The teacher could ask questions to guide a period of class discussion with regard to need for rules and what could happen without them. Have students indicate when and where rules are needed at school. Summarize group findings by labeling poster board, which will eventually be made into charts with each area named.

Divide the children into teams, giving each team one school area for which it is to make a set of rules (classroom, lunchroom, hall, playground, etc.). The teacher or students may complete charts by writing rules formulated by the teams.

Have a period of class discussion to bring out the need for someone to administer and enforce rules.

Have one group of children make a mural of a class without rules while another group makes a mural of a class with rules.

The above activity was used in first grade as planned. The use of simple puppets — paper bag, stick puppets, etc. — in role play situations would also be effective. In addition, the teacher could read the story, "Learning the Rules," *Compton's Young Children's Precyclopedia* (Vol. 9 pp. 20-25) and teach the finger play, "Children Obey," *Fun With Action Rhymes*, p. 8.

(See Objectives 0.1, 0.13, 0.14, 1.3, 1.5, 1.6, and 9.3.)

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IS IT RUMOR OR IS IT FACT?

This activity should help students understand how rumors start, understand that there are many rumors about the Juvenile Court, and understand some of the problems associated with being a witness, especially with recognizing the difference between fact and rumor.

Brainstorm with the students what they know about the juvenile court and juvenile detention center and put these ideas on the board. Do all ideas on the board agree with each other? Can you always believe what you hear from others? How could we check the accuracy of the ideas?

At this point in the discussion you could play the game "Telephone." Write down a sentence on a piece of paper. The sentence should have something to do with juvenile problems. For example: "The young boy, with a green and blue hat was seen running from Mr. Delmo's Grocery Store with bulging pockets." Whisper the sentence to one of the students, and have that student whisper the sentence to another student. The next student continues the message until it goes completely around the room. Have the last person say the sentence out loud to the class. Write the sentence on the board and ask the following questions:

How did the sentence change?

What if the last person who gave the sentence was a witness against the boy?

What is a rumor?

Can a rumor be harmful? What are sources of rumors? How are rumors handled in the courtroom? (Use of cross examination and objections to hearsay evidence)

What is the role of witnesses in our court system?

This exercise may also be used as a foundation for a unit on the role of the press in our judiciary system. A showing of the film *The Sheppard Case* raises many questions about the press as one source of rumors, and the influence of the media on court decisions. The ultimate issue for discussion of that case is the conflict between the rights of a free press versus the right to a fair trial by an impartial jury.

(See Objectives 0.1, 0.5, 0.7, 3.3, 3.12, 4.5, and 5.5.)

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LAWS DEVELOP AS A COMMUNITY GROWS

Read the five assumptions that follow:

1. One man alone can go or do as he sees fit.

2. Two or three moving in the same direction does not cause many problems.

3. One man moving in an opposite direction makes it necessary to make rules or have some understanding of the anticipated behavior of the others.

4. Diversity furthers the necessity of more rules of conduct.

5. Changes necessitate revoking some rules and making new ones to meet the new conditions.

The assumptions may be demonstrated by a large area marked into squares representing land. As people settle a region, communities spring up, first along the waterways, then inland. Trade, how communities specialize, and physical geography determines travel routes and methods of transportation. As communities develop, new industries are added. Laws must be developed to protect the rights of the citizens and yet promote progress. Students could study the relationship between law and urbanization using geography and history instructional materials.

(See Objectives 0.1, 0.3, 0.5, 1.1, 1.3, 1.4, 1.5, 1.6, 1.7, and 2.14.)

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THE POLICE STATION

Preparation. The students need no preparation. The teacher needs to arrange for a visit to the local police station and a visit with the desk sargeant. Useful reference and reading books for students on these:

"What People Do," in *Childcraft, The How and Why Library,* Vol. 8, Field Enterprises, 1973.

Greene, Carla, *I Want to be a Policeman,* Childrens Press, 1960.

Miner, Irene, *Policemen and Firemen,* Childrens Press, 1954.

The teacher may also wish to prepare a ditto sheet that looks like what is shown on the next page for students to color and make into police officers hats.

The Activity: Let the children do the talking. The teacher will only ask questions like those below and let the policeman in charge talk with the children.

What do policemen do? What are some of the more difficult jobs police do?

Who pays the policeman?

To whom are the policemen responsible?

How can citizens help police officers do their job better?

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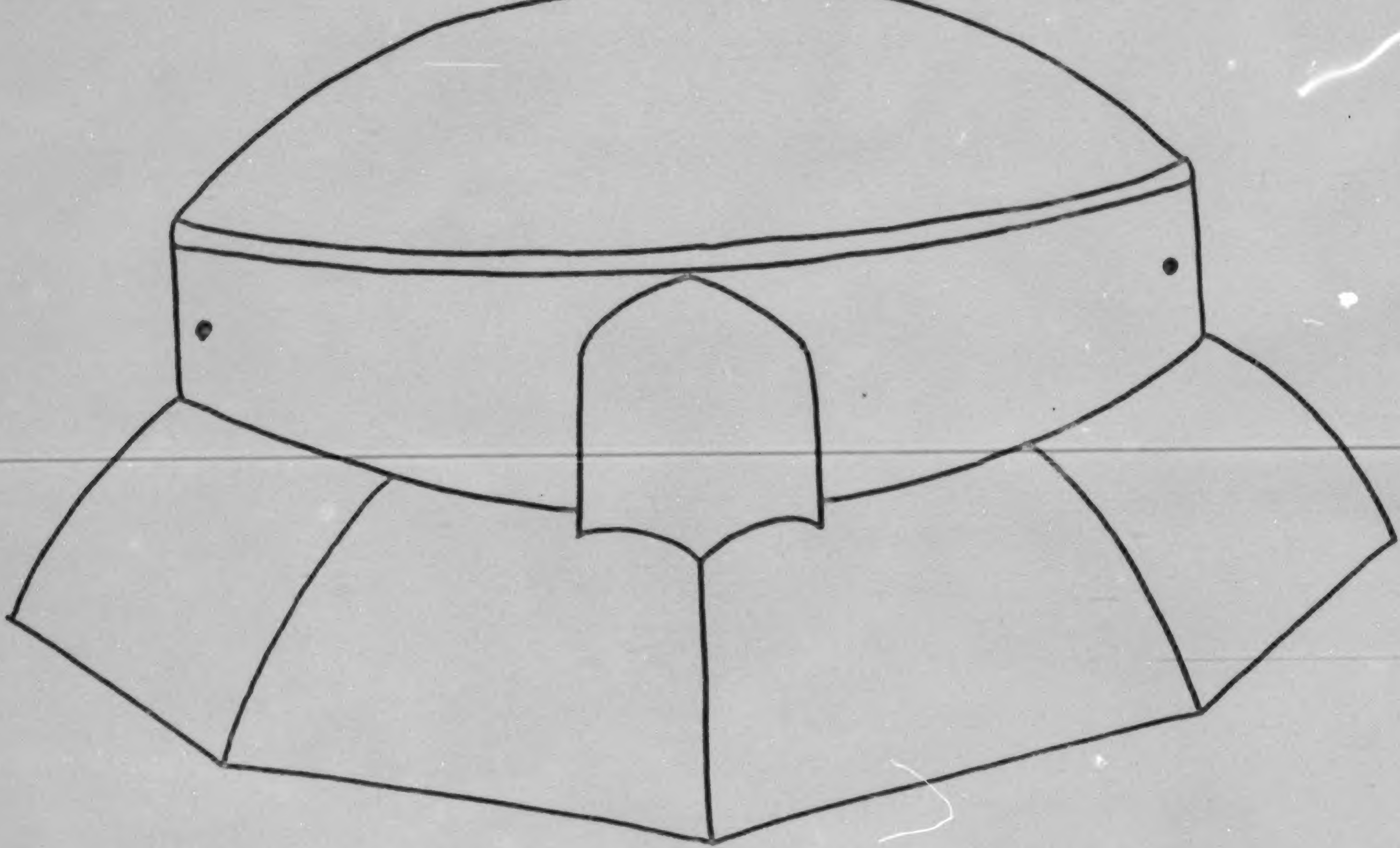

An alternate plan could be to invite a policeman to visit the classroom to talk to the children.

(See Objectives 0.1, 0.5, 0.14, 1.1, 1.3, 1.6, 2.8, 8.3, and 8.9.)

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THE POLICEMAN

Preparation: The students need no special preparation. The teacher will need a picture of a policeman directing traffic on a corner which also includes a police car somewhere in the picture. The following reference books may also be useful:

Arbuthnot, May Hill. *Time for Poetry*. Scott Foresman, 1961.

Greene, Carla. *I Want to be a Policeman*. Childrens Press, 1960.

Jayne, Mary Tinnin. *Making Music Your Own*. Silver Burdett, 1966.

Pitts, Lilla Belle. *The Kindergarten Book*. Ginn, 1965.

Shapp, Martha and Charles. *Let's Find Out About Policemen*. Franklin Watts, 1962.

One ditto sheet per child (sample included on next page).

The Activity: Let the children do the talking. Teacher will only ask questions and direct the answers in a positive way.

Who is in the picture?

What is he doing?

Why is the policeman our friend?

Why must we obey the policeman?

Why do we have rules when we cross the street?

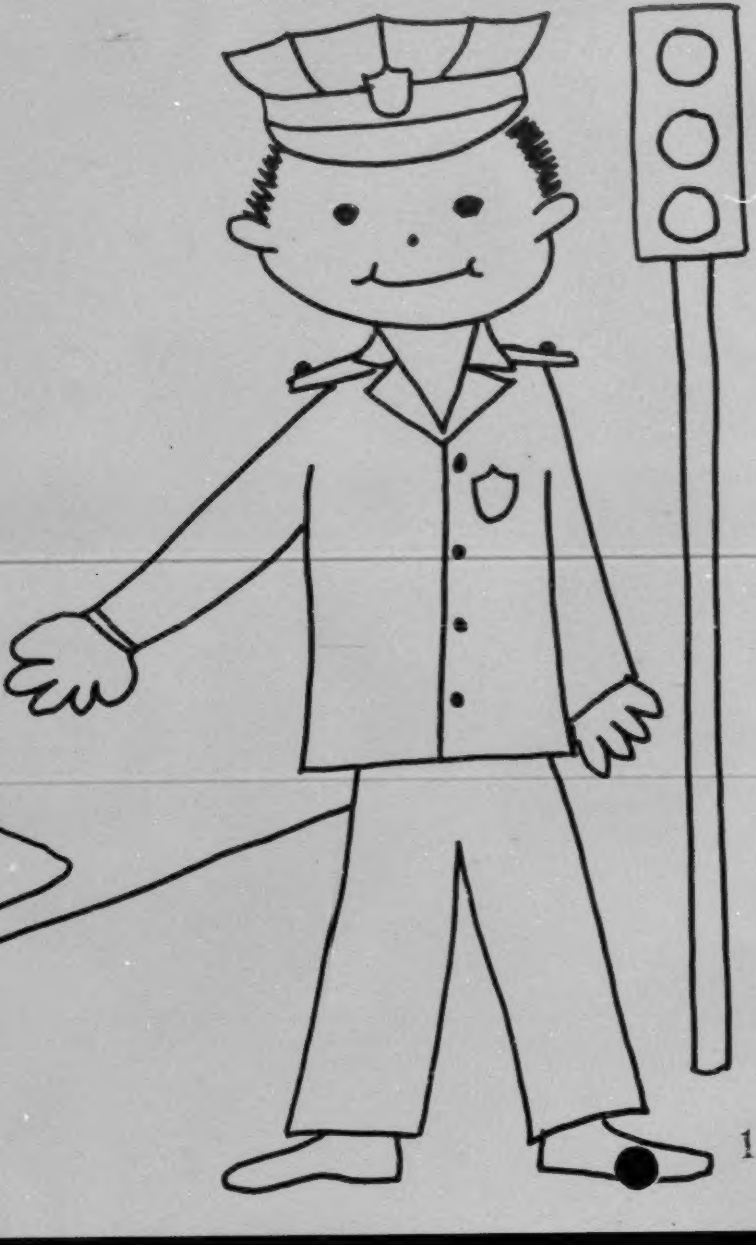
Why should we always cross at the corner?

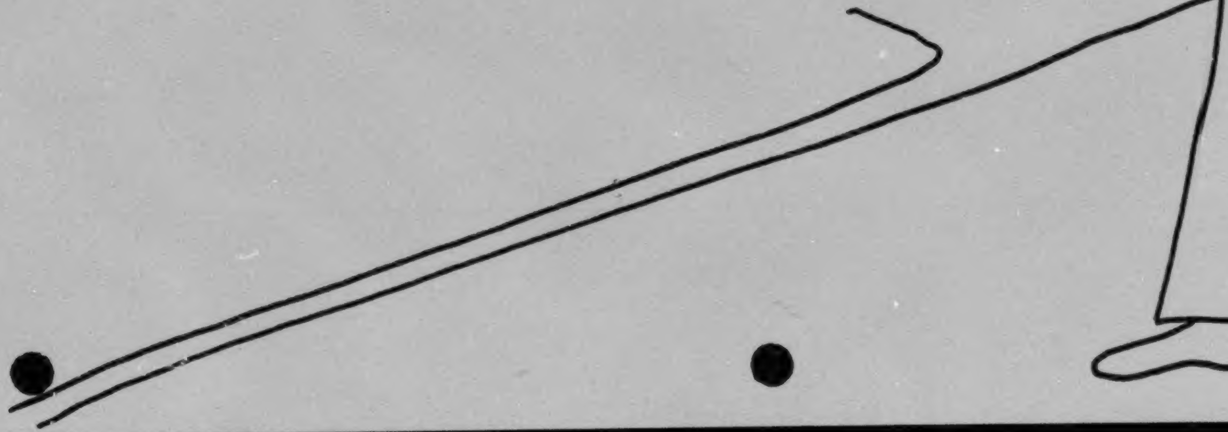
At the close of this activity the children will complete the ditto as instructed.

Each student should understand that policemen are friends.

(See Objectives 0.1, 0.14, 1.3, 1.6, 2.8, and 9.3.)

Draw you and a friend where you would be waiting to cross the street.





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HELPERS WANTED

Invite school employees (secretaries, cooks, maintenance personnel) to visit classroom to explain their duties and discuss the work they do. Discuss with children what they can do to assist these employees.

Have children look for pictures that show the different types of work performed by school employees. These may be displayed on a bulletin board.

Discuss the use of common facilities such as drinking fountains, bathrooms, and storage closets. How does care of these affect the rights of students?

Care of individual desks

Care of books

—opening a new book

—marking one's place

—turning pages

—protecting books on rainy days

—returning borrowed books on time

Pupils might collect examples of litter they have observed on the way to or from school. Use this to construct a collage or "ugly tree'.

(See Objectives 0.1, 0.14, 1.1, 1.3, 1.5, 1.6, and 9.3.)

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"DON'T SPILL THE BEANS"

The following activity is quoted from a Missouri first grade teacher's own experience:

"I used the purchased game 'Don't Spill The Beans' to prove my point to my first graders.

"The object of the game is to keep heaping beans into a bean pot that is balanced and will tip and spill if each new bean that is added is not properly placed, or if the bean pot is carelessly bumped.

"My children love to play this game in the afternoons when we have time; so one afternoon after playing the game with rules, I suggested that we play the game without any rules. Now to first graders that was very appealing. The rules to this game are so simple that they only consist of taking your turn and not crossing over your team's line except when it is your turn to place a bean in the pot. Even though the rules are simple, the lesson turned out beautifully, because this is a breath-taking game for little fellows and with each child's turn the whole team holds their breath until the bean is securely placed and the player return to his place. Without the rules the children began to inch closer and closer to the bean pot, which was placed between the two teams. Finally, one child got too close and bumped the pot spilling the beans and losing for his team. However, the biggest problem was the matter of taking turns. James, my aggressive one, began taking more than his share of turns. One brave soul tried to keep his turn secure, and met with an elbow and an angry look from James. Guess who got the extra turns!!

"There was fussing and general disorder throughout the whole game, and only the aggressive ones had fun. Afterward we all talked about what had just happened. Guess what!! All but two children liked the game better with rules.

"From this experience we have gone into areas such as room safety, home safety, and bicycle safety. The children are better able to understand that rules are important because we all need an equal chance, which can't be done without rules and laws that we must help make and keep."

(See Objectives 0.1, 1.3, 1.6, 8.3, 8.9, and 9.3.)

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SAM SHEPPARD: INNOCENT OR GUILTY

1. Show the film *Free Press v. Fair Trial By Jury: The Sheppard Case* up to the point of Dr. Sheppard's conviction for murder.

2. Ask the class if they feel Dr. Sheppard had a fair trial.

3. Have students develop a list of improvements in the trial procedures, which would have assured a fairer trial for Dr. Sheppard.

4. Show the remainder of the film.

5. Discuss changes in trial procedure that resulted from the Supreme Court's decision in the Sheppard case.

(See Objectives 0.1, 0.3, 0.5, 0.6, 0.7, 0.8, 0.9, 0.11, 1.5, 3.2, 3.3, 3.8, 4.5, and 5.5.)

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TAKING TURNS

Show the record-filmstrip *Taking Turns* which is part of the "Lollipop Dragon" series

(SVE). Then, have the students discuss the following:

—Why was it necessary for the children in the story to take turns?

—Is it necessary for students in our classroom to take turns? Why?

—What other rules should we make for classroom, playground, and buses?

(See Objectives 0.1, 0.13, 0.14, 1.3, 1.5, 1.6, and 9.3.)

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WHY LAW?

At the beginning of study on why the law, ask students to write a paragraph pro or con on whether laws are needed in society. Students may then be asked to defend their paragraphs in class discussion. These paragraphs will be collected and referred to again after the unit has been completed. Students will be asked to repeat the paragraph writing exercise and then compare the two paragraphs.

(See Objectives 0.1, 1.3, and 1.6.)

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DO GAMES NEED RULES?

Divide the class into two groups. Each group is given a game from which all directions have been removed. They are asked to play the game. The game is discontinued after the children have either developed their own rules or reached a point of frustration. (The use of checkerboards with a variety of symbols or markers to be used could serve as raw material for games and comprise a modified version of this activity.)

Next, a booklet of game directions is given to each group. The rules are read, discussed, and play is begun. After the children have played each game, the two groups meet and discuss the games. They will probably decide that the games without directions were not fun to play. Perhaps, there were conflicts among the students, which resulted in unpleasant experiences during the "no rules" situation.

The students could then be asked to consider whether or not rules and laws are necessary in other places (at home, at school, in the community). Younger children will likely conclude that rules (laws) are necessary at home, in school, and on the playground. Older students will likely agree that city, state, and national governments also have to make laws.

A good analogy to illustrate how rules in games are like practices and laws in society is to consider how a foreigner, a Chinese for example, would at first find it difficult to live in this society, since he does not know many of the practices, rules, and laws. Similarly, we as Americans would experience much frustration and difficulty if we were suddenly uprooted from the United States and placed in an African tribe or in an Eskimo family.

(See Objectives 0.1, 1.3, and 1.6.)

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THE BIG GAME

Present the class with this hypothetical situation: What would happen on a football field if there were no rules established prior to the game and no referee to determine whether or not any rules developed were followed? Active discussion in either small groups or large groups should result. Then, ask this question: Do people need rules and referees in "the game of life?"

(See Objectives 0.1, 1.3, and 1.6.)

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SILENT TEACHER

Begin the class with no directions whatsoever. Simply remain seated at your desk and ignore students. Allow students to become puzzled and confused. Then, after sufficient time, ask the students what they have experienced. Relate this to a society without direction or rules. Interesting discussion should develop.

(See Objectives 0.1, 1.3, and 1.6.)

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LOST ISLAND

Distribute copies of "Lost Island", shown below, for each student to read. Then divide the class into groups of not more than twelve students. Each group is to pretend they are in the Lost Island situation and must consider what they want to do. Allow groups 20-30 minutes to develop plans. Each group will then relate to the class what action they took. Rules and definite plans should evolve.

LOST ISLAND

All of you were on an airplane bound for India when a fierce storm swept the plane more than 1500 miles off course. Before the pilot was able to send a Mayday call, the radio was knocked out by lightning. The plane crash-landed in the ocean within swimming distance of an island. The plane sank after you all got free of the wreckage. The pilot and crew were killed in the crash.

All of you are on the island. The island is not on any map and is not near any shipping lanes. No one knows that the island exists! It is three miles long and three miles wide. Three-fourths of the island is made up of rocks and cliffs. One-fourth is vegetation. There are enough fruits and vegetables growing to feed all of you for four months. A pool of 500 gallons of fresh water that collected from the last rain is on the island. There is no fresh-water spring. The island abounds with poisonous snakes and scorpions.

Taking inventory, you find that you have only what you are wearing and whatever is in your pockets. There is no way off the island.

As follow up or as an extended role play, build in crises and new problems for the group. The activity could be used for one class period or could extend for many days with the teacher posing new situations or crises each day (e.g., your leader was struck on the head and can no longer lead your group; you can see the clouds of a typhoon that will hit Lost Island soon; poisonous snakes are getting to be a more serious threat; etc.)

(See Objectives 0.1, 1.3, 1.5, 1.6, 9.4, and 9.5.)

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EVIL MAN

Ask students to debate the proposition: "Man is Inherently Evil." The necessity of rules and laws should become evident, as means of dealing with the evil in man.

On the following day students could be asked this question: "Suppose all people are good. Would laws still be needed?"

(See Objectives 0.1, 1.3, 1.6, 8.3, 8.9, and 9.4.)

- 93 -

LAWS STUDENTS LIKE

Ask each student to list ten laws they like. Then on the blackboard or with an overhead projector, list all the laws students have identified. Maintain a tally of the number of times certain laws were listed. From the master list, discuss what these laws have in common. Why were these laws listed? Why were other laws not listed? Are laws listed the most important laws for our society? What do these laws tell us about the purposes of law?

(See Objectives 0.1, 0.4, 0.9, 0.10, 1.3, and 1.7.)

- 94 -

PREPARING FOR GUEST SPEAKER(S)

In the study of law and the court system it will be desirable to have judges, attorneys, policemen, juvenile officers, corrections officials, elected officials, or others visit the classroom and discuss with the students what they do or some topic the class is investigating.

Prior to the guest speaker's visit inform the class who is coming and what topic he will discuss. Tell students that the success of his visit will depend on the quality of their questions. On the day of the visit, before the guest speaker arrives, ask the students to share their questions and either write them on the board or on a transparency. When the guest speaker arrives, tell him something like this: "As you can see, we are now jotting down some questions we feel you could discuss that are important to us. Are there other matters you feel we should also deal with?" After he adds a question or two, proceed to have him sit with the class and encourage students to ask him the questions they raised. (You may wish to have the class seated in a circle for the discussion.)

Following the visit, the class could identify the questions raised prior to the visit that were not resolved during the visit so that it could discuss ways of investigating those questions in more depth.

(See Objectives 0.1, 0.2, 0.3, 0.5, 0.13, 1.1, 1.7, 2.7, 2.8, 2.9, 2.11, 2.13, 3.2, 3.3, 3.6, 3.7, 3.11, 3.12, 4.2, 4.5, 4.6, 5.2, 5.3, 5.4, 5.5, 6.1, 6.2, 6.3, 6.4, 7.2, 7.6, 8.3, 8.5, 8.7, 8.8, 8.11, 8.12, 9.1, 9.4, and 9.6. Which of these objectives could be accomplished through Activity 94 depends on the guest speaker and his topic.)

- 95 -

FIELD TRIP TO COURTHOUSE

Visit the court house to meet the court clerk and judge and discuss the possibilities of the students in your class visiting the court house. Plan with the clerk or judge which day would be best for the visit, noting in particular what cases are on the docket. Try also to find a time when the class could talk with the judge.

Once those arrangements have been made, tell the class about the visit and ask them to discuss with friends and parents the kinds of questions they would like to explore during and after the visit. Collect and discuss the students' questions before the visit, asking the class which of those questions are most important and why (they may rate the questions using a 1-5 point scale). Then, visit the court house. You may wish to invite parents to accompany the class. (The trip should be informative to them and may create parental enthusiasm for your law-focused education efforts). Have students observe, seeking answers to their questions. Also have them develop more questions. Following observation, discuss the questions and what was observed with the judge.

(See Objectives 0.1, 0.5, 1.3, 1.6, 1.7, 3.2, 3.3, 3.5, 3.6, 3.11, 3.12, 4.2, 4.3, 4.5, 4.6, 8.3, 8.5, and 8.6.)

- 96 -

THE MACARONI GAME

The following game was used by a Missouri attorney with elementary school students:

Inform students that you have a game for today called the "Macaroni Game". Ask if they want to play it. (They probably will say yes.) Then, pass out macaroni, three pieces per child. Do not give out any rules for the game. Just say, "Begin!" If students ask what to do, be evasive, perhaps saying, "We'll talk about that later," or "I'm not sure." After several minutes say, "Stop! Who won?" Allow students who claim to be winners to present reasons for why they think they won. After each student gives his reasons, ask the class if they agree with the student who claims to have won. Students will probably say no. At a logical point, announce, "I'm the winner. I'm older, I'm stronger, and it's my macaroni." Then proceed to defend your position from the challenges of children, using arguments like, "That's how games are played." "Well, that's life." "Well, it was *my* macaroni." "I am strongest." As students challenge, what should emerge from them is the need for rules. As students express that idea, challenge them to give examples, as if you are unconvinced. Then press on to having students indicate who makes the rules or laws of our country. Also, probe with questions to see if students can indicate who decides which person is right when there is a disagreement about what the rules mean in specific cases. Through this whole phase of the discussion, don't give any information, encourage students to explain what they know and to give examples. Later, their misconceptions can and should be dealt with.

(See Objectives 0.1, 0.4, 0.8, 0.9, 0.10, 1.3, 1.6, 2.2, 2.8, and 3.1.)

- 97 -

LAW PASSWORD

This activity should reinforce the students' knowledge of the legal terms they have previously learned. In preparation for the activity, the teacher will need to make flashcards with legal terms and short definitions to help the contestants giving the clues.

To begin the activity, pair off the students. Show one person of each pair one of the words (e.g., "trial"). The person who saw the word gives one-word clues to his partner. Clues are given until the word is guessed. (You may want to limit the number of clues that may be given.) Each time a word is guessed, that pair of contestants gets 5 points. The first team to get 25 points wins. (There are other possible scoring systems: E.g., giving ten points if the word is guessed with the first clue, 9 if it is guessed with the second clue, etc.)

To follow up the game, the words could be written down by the students in the audience as the contestants guess the words, and the words could be later used in a vocabulary lesson. The game could also be revised into "Values Password," using value words such as *happy, responsible, polite, self-controlled,* etc.

(See Objectives 0.1, 1.8, 2.8, 3.2, 4.3, 6.4, 7.4, 8.5, and 9.1.)

THE BIG QUIZ GAME

Rules for playing game

The game is based on the TV Game "College Bowl".

1. Students are divided into two or three groups depending on the size of the class. Two groups are preferable. A class of over 20 should be divided into three groups.

2. Each group selects a captain and a team name. Each group is given a signal, such as ding, dong, and buzz. This is to determine which group answers the questions first.

3. The teacher asks all questions and determines which team signals first. There are two types of questions in this game.

    a. *Toss-up questions.* The student who signals must answer the question as soon as he signals.

    b. *Point Value questions.* Answers to these questions must be given by the chairman of the group after discussion with the group.

4. Team members may confer on answers to *point value questions*, but they have 15 seconds in which to answer. On *point value questions*, the chairman must give only one answer.

5. As soon as an answer is given, if it is incorrect, then the other team or teams must signal and then answer. Questions can only be repeated once after they are read originally. *Toss-up questions* are read only once. If neither team can answer the question, then the next question is given as a toss-up question.

6. The game is over when all questions have been asked or time is up. The team with the highest score is the winner.

Examples of categories

The Supreme Court

The American Court System

Law

Government

Current Events

National Events

People in the News

History in the News

Examples of questions that one teacher used

1. (5 points) Believing it may be just as important as the constitutional right to trial, the

Justice Department has endorsed a bill that would require federal courts to provide what—for criminal defendants who cannot understand English? (Translators).

2. (10 points) The ease with which a helicopter--stolen by a young soldier--penetrated the supposedly restricted air space over the White House raised serious questions among law enforcement officials on governmental security. The Secret Service, which is responsible for the safety of the President, is a part of what government department: Justice Department, Defense Department, or Treasury Department? (Treasury Department)

3. (10 points) William B. Saxbe took his oath in the Great Hall of the Justice Department and became the 70th person (the third within a year) to hold what important government position? (Attorney General)

4. (15 points) Unless something is done to stem the flow of cases into the Supreme Court, the Justices by 1980 will confront a new case every hour, including weekends. Name at least two justices of the U.S. Supreme Court. (Chief Justice Warren E. Burger, William O. Douglas, William Brennan, Potter Stewart, Bryon White, Thurgood Marshall, Harry Blackmun, Lewis Powell, and William Rehnquist were justices when this question was used.)

5. (20 points) Montana became the 32nd state to ratify the Equal Rights Amendment to the U.S. Constitution, although the legislature of Georgia voted against adoption. How many more states must ratify this amendment before it becomes law? (6)

6. A Justice Department lawsuit asks that a northeastern Arizona County be reapportioned and that a new county election be ordered within four months. Although voting right cases have been filed in the South and in other areas for various groups, this is the first case involving voting rights of what minority? (American Indians)

(See Objectives 0.1, 0.2, 1.1, 1.7, 2.2, 2.7, 2.8, 2.9, 2.11, 3.2, 3.5, 4.2, 4.3, 5.5, 6.4, 7.2, 7.4, 8.2, 8.4, 8.5, and 9.1.)

- 99 -

LAW AND THE GROWTH OF U.S. BUSINESS AND INDUSTRY

The great economic growth of the U.S.A. was aided by legislation to promote and protect industrial growth. Have students look up various types of laws on state and national levels which promoted industrial growth. Examples follow:

1. Investigate *patent laws* which protect and encourage invention. Read on industrial growth in the U.S. Discuss the importance of patent law in encouraging and rewarding innovation (e.g. Eli Whitney's cotton gin as opposed to Samuel Morse and the telegraph).

2. Discuss *tax breaks* and subsidies that can and have created favorable climate for business, as well as early tax exemptions, such as laws in New York, Vermont, and Ohio which favored certain industries. Compare to oil depletion allowances and methods used

by industrial development groups to attract new industry. (These aspects could be assigned for individual reports.)

3. Analyze problems of the individual proprietor in terms of money available for investment and liability for debts as compared to corporate method. Students may conduct research to find costs of early textile mills, such as those in Lowell, Mass. and the cost of the Erie Canal. This activity proves that *incorporation laws* make accumulation of funds for starting business much easier and less risky.

4. Since tariffs were an important form of protection vs Britain in the Early Federal period, explain the competitive position of Great Britain after the Revolutionary War and War of 1812 and effect of British trade policy on infant industry.

Each student should list types of pro-business legislation and explain in writing or otherwise how these laws encouraged growth in the economy. Have students speculate on the consequences for business growth if each of the various types of probusiness legislation were not passed. Consider implications for the present. Students may then be asked to prepare to debate the merits of each type of probusiness legislation)e.g., Resolved: That patent laws have done more harm than good.)

(See Objectives 0.1, 0.2, 0.4, 0.5, 0.11, 1.1, 1.3, 1.4, 1.6, 1.7, 2.9, 2.10, 9.4, and 9.5.)

- 100 -

LAW PRINCIPLES: A HISTORICAL INVESTIGATION

Ask students the following question: "What principles if any, of ancient and early law still exist today?" Then divide the class into research groups to trace the influences of such topics as: (a) The Ten Commandments, (b) Greek system of arbitration, (c) Plato's laws (concept of perfect society), (d) Code of Napoleon, (f) English common law, etc. Each research group will then be asked to explain their findings to the class.

Have students try to find out not only what the substance was of some of the above laws, but how such laws were actually interpreted and enforced. Explain also who was expected to obey the laws above. For example, did the *ancient* Hebrews consider the Ten Commendments to apply to all humanity or just to themselves?

(See Objective 0.1, 0.5, 1.7, 2.9, 2.10, and 7.4.)

- 101 -

THE JUVENILE AND THE LAW

Ask the juvenile officer and the juvenile judge to come to the classroom to discuss their jobs. You may wish to ask them to contrast and compare the philosophy, jurisdiction, and responsibilities of juvenile court with those of the adult court.

1. After the presentation, the students may role play some of the cases over which the juvenile courts have jurisdiction.

2. After the presentation, the students could do a creative art project showing scenes they think might occur in juvenile court.

3. Students could compile a list of agencies or organizations willing to help juveniles. *(See Objectives 0.1, 6.1, 6.2, 6.3, and 6.4.)*

- 102 -

LAW AND YOUR LIFE

Assign students to record the following over a 24-hour period:

> From the time you get up until the time that you go to sleep at night list examples of how law affects your life? (E.g., laws have established what system of time we use, which affects what you see on your alarm clock dial when you get up; factories are inspected which relates to your toothpaste; you see stop signs on the way to school, etc.) Try to make your list as long as you can."

Use the results to stimulate class discussion on the amount of law and the various roles law plays in our society.

(See Objectives 0.1, 1.1, 1.3, and 1.6.)

- 103 -

THE SUPREME COURT: IS CONSISTENCY DESIRABLE?

1. Ask your class this question: "Is a decision by the Supreme Court a permanent decision, which can never be changed or reviewed in the future?

2. Have the students research decisions of the Supreme Court like Plessy v. Ferguson and Brown v. Board of Education of Topeka, Kansas, giving the following information: a) dates of decisions, b) principles involved in the decisions, c) nature and implications of the court's decisions.

3. Given the information they have gathered, ask the students to investigate the conditions which led the Supreme Court to render the two decisions, which obviously conflict with one another.

(See Objectives 0.1, 5.5, and 5.8.)

- 104 -

DEBATING THE TOPIC OF CAPITAL PUNISHMENT

Compile a list of various types of capital punishment used today and in the past in the U.S. and in other nations. Ask the question "Does capital punishment deter crime?" Have students gather data to support their positions. Have some of the students prepare and conduct a debate on the issue: "Resolved: That capital punishment should be reestablished (or abolished) in Missouri."

Debate teams consist usually of two students each, two who argue in behalf of the pro side, two who argue in behalf of the con side. The teacher could check with the librarian to find books that discuss rules used in debates. It is important that students on each side understand what their job is during the initial round of speeches and during the round of rebuttal speeches. Other students in the class could have the job of scoring each team using a scoring procedure suggested in one of the references dealing with debate procedures.

Following the debate the entire class could discuss the topic, examining the kinds of evidence used to support each side.

(See Objectives 0.1, 0.2, 0.4, 0.6, 0.7, 0.11, 0.12, 1.4, 8.7, 8.8, 8.11, 8.12, 9.4, and 9.5.)

- 105 -

A VISIT TO THE LIBRARY

After discussing people who work in the community and the library in particular, arrange for a visit to the public library. Children should be allowed to browse through books for their age group. They are shown the numbers on the backs of the books and explanation is given that those numbers help the librarian easily find a certain book. The librarian should talk briefly about care of books and explain procedures for checking out books. They should tell students that this facility is paid for by their parents and people of the community through taxes.

This experience is somewhat different from the school library if there is one, and gives students an awareness of books and their care. The Coronet film *Beginning Responsibility Concerning Care of Books* is relevant. Consider with the class what rules and laws are needed to help public libraries work as they should.

(See Objectives 0.1, 0.13, 0.14, 1.1, 1.3, 1.5, 1.6, and 1.7.)

- 106 -

THE RIGHT TO VOTE

If public elections are carried out in the school building during the school year, take the children to observe the procedures that are followed. Give them a chance to ask questions.

Arrange to have a class election to decide which three children will make rules for handing out, sharing, and caring for toys and games on rainy days. Plan to have a private voting area with a box to drop the votes in. Arrange a place for the children who are elected to meet and decide on rules to be followed by the class. The committee is to report to the class when plans are complete.

(See Objectives 0.1, 0.13, 0.14, 1.1, 1.3, 1.5, and I.6.)

- 107 -

CAPTAINS OF THE DAY

To encourage quiet and orderly movement of students through the building, class members will serve as "Captains of the Day" on a rotating basis. Each day one boy and one girl will serve as captains to observe behavior of class members as they go from classroom to playground, to other classrooms, to the lunchroom, and to the restrooms. Children who fail to follow established procedures and rules are to be quietly reminded by their captain. Children who fail to cooperate are to report to the teacher. Most Children seem to respond well to this kind of control and look forward to their own turn at being captain of the day.

After every student has had a chance to be Captain of the Day — or before — have a class discussion to evaluate how well the class is doing on the playgrounds, in the halls, in the lunchroom, and in the restrooms. The class should be praised for living up to its responsibilities where possible. Encourage students to explain why it is important to be quiet in the halls, why it is important to obey the various school rules that relate to the playground, etc.

(See Objectives 0.1, 0.13, 0.14, 1.1, 1.3, 1.6, and 9.3.)

- 108 -

THESE BUILDINGS ARE OURS

Have children photograph or collect pictures of public buildings in their town for the purpose of preparing a bulletin board display. Have the students investigate what services are provided by people who work in each of the buildings. This activity is planned to help students become aware of the buildings and services provided by taxation.

(See Objectives 0.1, 0.5, 0.14, 2.8, 4.3.)

- 109 -

WE HAVE A PRESIDENT

Display pictures of the President and of the White House. Using questions like those that follow lead children to the realization that the process of getting a president must be done according to a plan and that people had to make the plan. Possible questions:

Who is our president?

Who was the first president?

How did he get to be president?

Who decided there would be a president?

What does first paragraph of Article II, Section 1 of the U.S. Constitution say about the election of Presidents? Read that section and discuss. The class may also read and discuss Amendments XII, XX, and XXII.

The films *George Washington* (Britannica Films, 19 minutes, black and white) and *Washington—City of the World* (Bailey Film Associates, 14 minutes, color) may be useful.

Have students locate Washington, D.C. on a map.

Have student read and discuss the book, *Christopher for President* by Addie Crawford (Golden Press).

(See Objectives 0.1, 1.1, and 2.8.)

- 110 -

A-B-C-D-E-F-GOOD CITIZENSHIP

Students will try to use each letter of the alphabet to begin words that could be used to identify qualities of good citizenship (see box below). Have students use their words in sentences about good citizenship.

A--active, alert, able, ambitious

B--busy

C--cleans, cooperate, campaigns, compassionate

D--doer, does

E--eager

F--fair, friendly

G--good, gentle, great

H--hears, heart, happy, honest, honorable, hope

I--interested, important, industrious, informed

J--just

K--kind, knows

L--listen, learn, look, love

M--mind, manners

N--nice, neat

O--okay, obey

P--polite, play, peace, patient, participates

Q--quiet

R--right, read

S--saves, serve

T--true, tries, truth, thinks

U--useful, understands

V--vote

W--work, watch, write, wait

X--X will mark the ballot on election days.

Y--you

To vary the activity, have students state names of government officials starting with each letter, or have them state names of legal and other governmental terms starting with each letter.

(See Objectives 0.1, 0.14, 2.8, 3.2, 4.2, and 8.5.)

- 111 -

FILMS ABOUT RIGHTS AND RESPONSIBILITIES FOR YOUNG STUDENTS

A

Show the film *Bike* (Churchill Films, 13 minutes), a color film for primary grades. This is an open-ended film about a boy who takes another child's bike to ride and breaks it. The film may be used as an introduction to a discussion about rights and responsibilities.

Stimulate discussion by questions. For example: Is it all right to take Jim's crayon while he is in a reading group? Is it all right to run across the ball diamond while another group has a game going? Is it all right to take the cookie from Susie's lunch and eat it?

B

Show the film *Beginning Responsibility--Other People's Things* (Coronet, 11 minutes), a color film for primary grades. This film is about how public and private property should be cared for. After showing film, set up a number of role play situations during which each child should have an opportunity to demonstrate his understanding of individual rights. Use desks (crayons, pencils, erasers, paper), clothing, lunch pails, lunch, and milk money, games, taking turns, etc.

(See Objectives 0.1, 0.14, and 9.3)

- 112 -

MAN'S RESPONSIBILITY TO NATURE

Discuss the meaning of the terms "responsibility", "environment", and "protection". Ask the students what they think man's responsibility to nature is. Introduce the book and the accompanying tape *Andy and the Wild Wood Ducks* by Mayo Short (Bowmar, 622 Rodier Dr., Glendale, CA 91701). Ask the students to listen and identify what was Andy's responsibility to the environment around him. After students have listened to the story, discuss what the natural environment was around the pond that Andy went to every spring to watch the wood ducks. Ask the students what irresponsible action Andy took towards nature? Did he mean to do what he did? How could he or any child learn more about things they can do to protect nature?

Have students investigate and list for discussion *irresponsible* actions of man that have harmed nature and the consequences that have resulted, and have them list *respon-*

sible actions that man should take to protect nature. Ask each student to write a short paragraph describing a responsible action that he or she does now or will do to protect nature. In later sessions have the students make a bulletin board on the subject "We all help to protect nature". Discuss the students' ideas.

(See Objectives 0.1, 0.2, 0.3, 0.5, 0.11, 0.14, 1.3, 1.5, and 9.3.)

- 113 -

THE LEGAL TERMS WORD SEARCH

Pass out to each student a copy of the array shown on the next page and a copy of "Definitions of Legal Terms," shown below. If the student knows that word, he will find it in the array. The words may be spelled out vertically, horizontally, diagonally, forward or backward.

A simpler version of the word search is to pass out a copy of "List of Legal Terms" and also their definitions. After students find the term in the array, they should then find the term's definition.

Definitions of Legal Terms

A crime of a serious nature, usually punishable by death or imprisonment in a state prison.

A threat to inflict physical injury upon another.

The decision of the jury with respect to the facts.

The final result of a trial. This may be a fine, imprisonment, revoking a license or other.

When a person's right to own, possess, and use personal property is interfered with by another.

The breaking or violating of a right or duty.

A paper showing a person that a charge has been brought against him.

A written order commanding the named person to appear in court.

The one who brings the legal action.

The one accused of the crime or wrongdoing.

Having legal force, lawful or binding.

The unlawful striking or touching of another person of no legal effect or force.

LEGAL TERMS WORD SEARCH

E L T R E S P A S S I C M I N O R E Q
I L E I K H R P K E Y C B O N M Y T B
P Q X Z Y V E R D I C T S O F O C X T
C O Y B O W C O N V E R S I O N L I M
O Q W R M C E I Y M A I T O R T E S T
K L W E K J D Y T I M O A N G W X Z M
P O B A T T E R Y I U T T W E B V N U
S Q R C K M N C W G F N U R R S L E Q
A S U H L K T R M F E M T L Y P A G L
B U K E L S E M I M L S E M B O T L M
W M M K S D U T G Y L K J L W S T I Y
K M L E N O N D A S S A U L T U I G X
Q O M A O I U K S K J S R M K B U E Y
P N L I A J K F E L O N Y K S P Q N M
R S I L M N A S G I W R T Y U O C C L
Q W P G F V B K S B E R T Y T E A E M
Q A S G H K M N D E F E N D A N T I N
M N V C B N C V A L I D X Z Y A Y G J
K J D K E G I L O E U S T I O W V C M
W U I Q C O Y I N I D M N B C I O P B
Q R E V C D G K H M D O P E W K R C X

A slanderous or untruthful written or printed statement that reflects upon another person's reputation or character.

The failure to exercise the degree of care required by law.

Verdict of not guilty.

The act of falsely making or materially altering a document with intent to defraud.

A law enacted by the legislature.

One under the legal age of maturity.

An injury done to the person, property, or right of another individual.

A private or civil wrong.

Spoken malicious remarks about a person.

According to this rule cases are decided like similar cases in the past.

List of Legal Terms

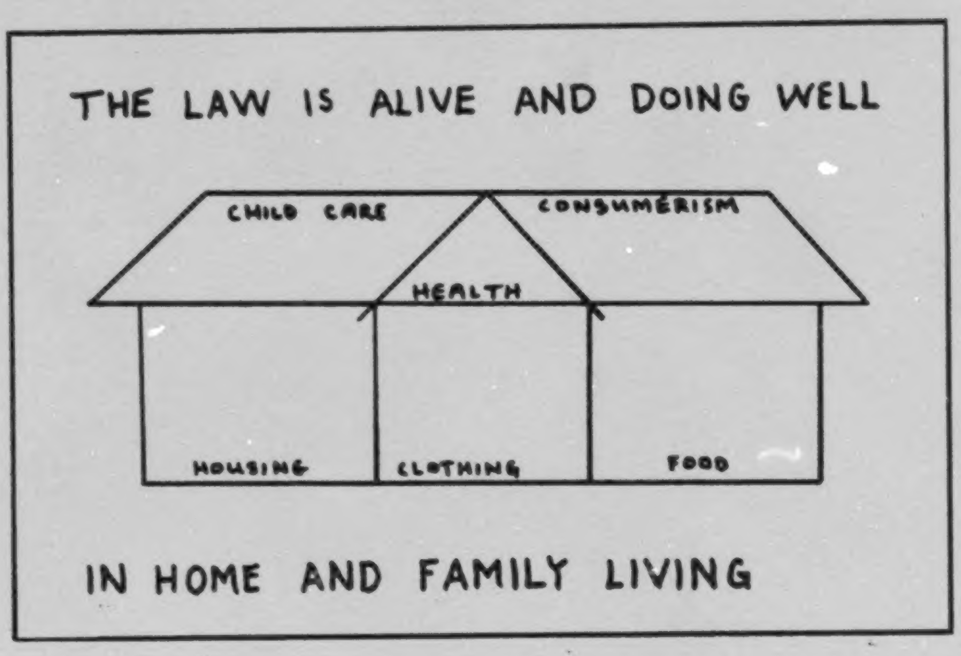
1. felony
2. assault
3. verdict
4. judgment
5. conversion
6. breach
7. summons
8. subpoena
9. plaintiff
10. defendant
11. valid
12. battery
13. void
14. libel
15. negligence
16. acquittal
17. forgery
18. statute
19. minor
20. trespass
21. tort
22. slander
23. precedent

(See Objectives 0.1 and 3.2.)

- 114 -

LAW DAY BULLETIN BOARD

Have each student bring a newspaper article or write a summary if from a magazine to place in the proper "room" of the bulletin board house shown below. A social studies class could be invited to visit, see, and discuss the bulletin board with the home economics class.


THE LAW IS ALIVE AND DOING WELL
CHILD CARE
CONSUMERISM
HEALTH
HOUSING
CLOTHING
FOOD
IN HOME AND FAMILY LIVING

(See Objectives 0.1, 0.2, 0.3, and 1.7.)

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A COMPARATIVE STUDY OF RULES

Ask students if they belong to any organizations. List them on the chalkboard. Some examples may be Brownies, Cub Scouts, Girl Scouts, Boy Scouts, church youth groups, 4-H Clubs, etc. Have students discuss what rules or laws govern the membership and activities of their respective organizations. Ask if each organization needs rules, and discuss. Move the discussion toward laws governing various political units of our state and nation. Ask the student to compare the rules of their own organizations to laws or rules in school, city, state and nation. The discussion may include other states and nations depending on the maturity of the students. In comparing the rules of the different groups, focus on topics like how are officers selected, who are members (citizens, if government), what rights do members have, etc.

(See Objectives 0.1, 1.1, 1.2, 1.3, 1.6, 1.7, 2.2, and 2.3.)

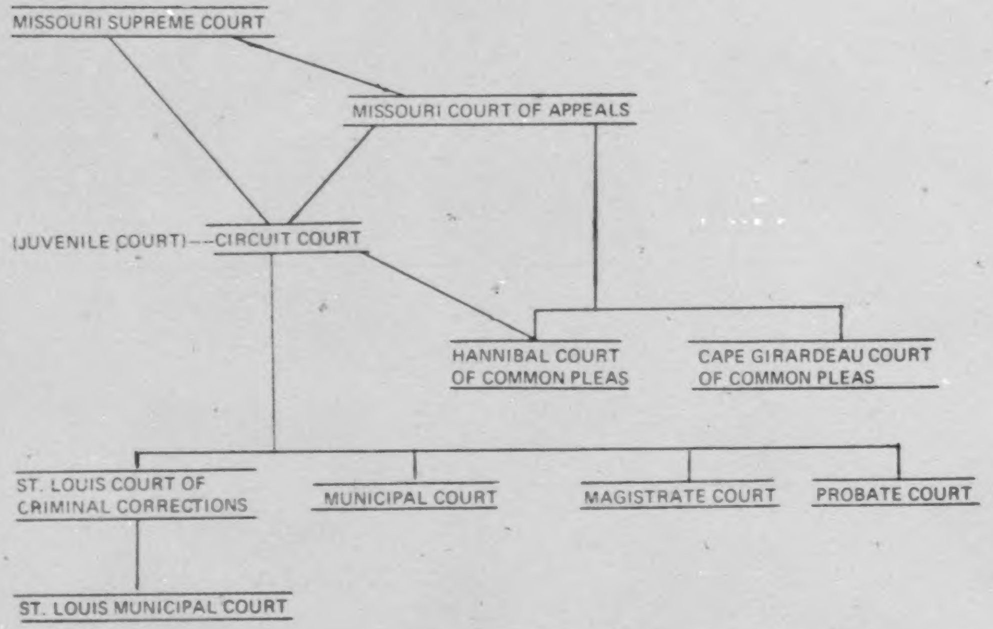
- 116 -

WHICH COURT?

Use the chart on Missouri courts shown on the next page. Draw the chart on the chalk-

State Judiciary

One way to initiate student involvement in the study of the court system is by having students volunteer to make placards representing each court in the judicial hierarchy. Each student can briefly state the purpose and function of the courts and place his placard on the appropriate level as the different courts are studied.


MISSOURI SUPREME COURT
MISSOURI COURT OF APPEALS
(JUVENILE COURT)--CIRCUIT COURT
HANNIBAL COURT OF COMMON PLEAS
CAPE GIRARDEAU COURT OF COMMON PLEAS
ST. LOUIS COURT OF CRIMINAL CORRECTIONS
MUNICIPAL COURT
MAGISTRATE COURT
PROBATE COURT
ST. LOUIS MUNICIPAL COURT

board or use the overhead projector. Divide the class into small committees, each of which will study the function and jurisdiction of one court. (Use only those courts found in the locality.) Ask each committee to submit to you several cards, each of which lists a hypothetical case that the court they are reporting on would handle. After researching their particular courts, the committee would give oral reports to the class. Following the reports and/or readings on court jurisdiction, the teacher could shuffle the hypothetical case cards, have a student read a card, discuss who would have jurisdiction over the case, discuss students' reasons for their choices, then pick up, read, and discuss it and other case cards using the same procedures as were used with the first card.

(See Objectives 0.1, 0.5, 0.7, 4.2, and 4.3.)

- 117 -

HELP FOR JUVENILES

Have students compile a list of local (city or county) and state agencies and organization providing assistance to children in any type of trouble. Then, divide the agencies among the students and have each agency contacted to see if they would provide any publications or speakers in order to better explain their services. Then, have students decide which materials will be used by the class as a whole and what speakers will be invited to the class to discuss the work of their agency.

This activity may be used during a unit on juvenile law or the juvenile court system.

(See Objectives 0.1, 0.2, 0.5, and 6.4.)

- 118 -

VISUAL AIDS TO UNDERSTAND MISSOURI AND FEDERAL COURT ORGANIZATION

Have students chart the organization of the Missouri and U.S. Court systems in one of the following ways:

1. Prepare a bulletin board showing the corresponding levels of Missouri and Federal Courts.

2. Prepare transparencies with overlays demonstrating the courts levels.

3. Prepare a media presentation utilizing slides or video tape explaining the various levels.

4. Prepare a felt board as a test of the students abilities to define the corresponding levels of the U.S. and Federal court systems. Make sure the courts are individually labeled and form a figure of the correct court system.

(See Objectives 0.1 and 4.4.)

- 119 -

LEGAL RESEARCH PROJECTS

Teachers might want to assign some outside research projects related to the law to the students. Moreover, interested students might want to look further into specific areas of the law. What follows below is only a short list. There are many other possibilities.

1. Research of Local Ordinances

2. Research of the "Changing Law"

a. "Good Samaritan" Laws

b. Payments to Victims of Crime

c. "Victimless Crimes"

d. Citizens Arrest

Students should be able to predict consequences of such laws and argue for or against them.

(See Objectives 0.1, 0.2, 0.4, 0.5, 0.6, 0.7, 0.9, 1.1, 1.3, 1.4, 1.6, 1.7, 8.8, 8.11, 9.4, and 9.5.)

- 120 -

REASONS FOR LICENSING

The following activity was developed by a second grade teacher to show how the law can serve people in a way that relates the law to the students' personal lives:

"A policeman comes to our school to inspect and license childrens' bicycles. Second grade children visit the City Hall as part of the social studies curriculum. On this field trip ask to see the bicycle files. One or two childrens' registrations are pulled and an officer explains how lost and stolen bicycles are located and returned.

"My class has done this and they seemed very impressed. It is best to notify the City Hall before arriving what you want to see."

(See Objectives 0.1, 1.3, 1.6, and 2.8.)

- 121 -

HOW TO DEVELOP YOUR OWN LEGAL RESOURCES FILE

Below are some suggestions for building a legal resources file, where to find things, and whom to ask:

1. The school library should have a volume of state education laws and regulations. If it does not have that book, the librarian may write the Director of School Law, Missouri Department of Elementary and Secondary Education, P.O. Box 480, Jefferson City, Mo. 65101.

2. Contact the local bar association for the names of members who might serve as resource persons. Attorneys might lend copies of Federal and state statutes, court opinions, and help with the editing of these materials for use as supplementary lessons.

3. *A Legal Memorandum* is a report published periodically by the National Association of Secondary School Principals and furnished to members of the National Association of

Student Activity Advisers as a membership service. This newsletter contains much legal material on student activities (e.g. smoking rules, school paper censorship, etc.). The address of the NASSP is 1201 Sixteenth Street, N.W., Washington, D.C. 20036.

4. Your public library or city hall may have copies of a city charter, local laws and ordinances, etc.

5. Various government agencies (see phone book) may be able to supply copies of laws, regulations, hearing transcripts, etc.

6. Office supply stores often carry various legal forms such as summons, warrants, etc.

7. Specific bills — or a miscellaneous sample of bills and resolutions — may be obtained from a member of Congress and of the state legislature.

8. Have your school library subscribe to *U.S. Law Week*, a digest of Supreme Court cases. Subscription about $20 from the Bureau of National Affairs, Inc., 1231 25th Street, N.W., Washington, D.C. 20037.

9. Other possible sources of assistance: League of Women Voters, American Civil Liberties Union, and Common Cause.

10. Clip and save: "The Docket" section of *Consumer Reports* (law and the consumer); the "Law" section of *Time Magazine;* "Trends in Labor" and "What You as a Businessman Can and Cannot Do" in *U.S. News and World Report;* newspaper articles that illustrate the role of law.

11. In addition, build up a list of the people from a wide range of community agencies and programs who would serve as resource people. Such people might include: a law school professor, a local judge or other court personnel, a legislator; or people connected with the Juvenile Court; the Board of Probation and Parole, a local Foster Home, Penal, or group home program, the local Bar Association, the local Police (Public Relations Department if they have one), the Public Defender's office, Legal Aid Office, ACLU, the Sierra Club, consumer groups, and other advocacy groups involved with legal issues.

12. Teachers can sometimes get the help of an interested parent with building up a resource file of people connected with the courts, community agencies, and local programs.

13. The Upper Darby Pennsylvania School District has developed a model for a volunteer parent who acts as coordinator of all high school activities using community resources for studying the justice system.

(Actually, the development of a resource file could apply to any and all objectives.)

- 122 -

ISSUES IN THE NEWS

Have students clip from newspapers articles, pictures, cartoons, and editorials that deal with social issues. Select those that you and your students consider important, determine what alternative policies are being suggested, and predict consequences for each alternative. Determine which may eventually be dealt with by legislatures or the court system. Propose laws that would resolve the conflict and yet not deny human dignity. How would those laws be enforced? What new areas of conflict might arise? Students might write letters to editors or legislators expressing views.

(See Objectives 0.1, 0.2, 0.3, 0.4, 0.5, 0.6, 0.7, 0.8, 0.9, 0.10, 0.11, 0.12, 0.13, 0.14, 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 2.2, 2.6, 2.7, 2.8, 2.11, 2.13, 9.4, and 9.5.)

- 123 -

CONSUMER SAFETY CAMPAIGN

Students will search the community for any products for sale which have been labelled potentially dangerous or hazardous by the Food and Drug Administration, the Consumer Product Safety Commission, or other federal agency and report to merchants and law enforcement agencies. Students should work closely with law enforcement officials, analyze the reasons for the law, and recognize the positive and protective aspects of law.

(See Objectives 0.1, 0.2, 0.4, 0.13, 0.14, 1.1, 1.3, 1.6, and 9.3.)

- 124 -

VINYL CHLORIDE SPRAY CAMPAIGN

Students could use the FDA list of spray products containing potentially hazardous vinyl chloride and check local shelves for any banned products. They could continue to monitor stores until sprays are removed. This activity serves as an example of the manner in which any future banned, hazardous or dangerous products might be handled.

(See Objectives 0.1, 0.2, 0.5, 0.13, 0.14, 1.1, 1.3, 1.6, and 9.3.)

- 125 -

A TOY SAFETY DRIVE

What follows is a teacher's written description of an activity related to toy safety:

"I suggested this particular project to the students because it seemed to be an ideal project for teenagers. Who could better examine the toys than they?

"A. *Special Project Activities*

"1. During October, students wrote to the Superintendent of Documents, Washington, D.C., for all publications concerning toy safety.

"2. Students also wrote to the U.S. Consumer Products Safety Commission for a list of banned toys.

"3. Students used the *Reader's Guide* in the Library to find current magazine articles on this subject, of which there were a good many.

"4. Students collected clippings from newspapers on this subject.

"5. Students researched *Consumer Reports* for further information.

"6. Early in November, a parent found a newspaper article about a meeting on toy safety training. I contacted David O. Fischer, Assistant Circuit Attorney for Consumer Protection, to arrange for the students to attend the meeting.

"7. Five students were driven by a parent to attend a training session on November 9 in the Circuit Attorney's Office in the Civil Courts Building in downtown St. Louis. A training film was shown, procedural methods of finding unsafe toys were discussed, and instructions for surveying were given. The law involved was outlined and penalties for disobeying the law were discussed. Written instructions for surveying and Federal Government booklets on banned toys were issued to each student. That evening these students made the TV newscast; they were shown taking notes during the training session.

"8. Students were assigned to check at stores in their own community. In addition, they suggested checking small stores which the Circuit Attorney didn't know about. Students left school to work on the survey in these assigned stores. Students reported suspicious toys to Mr. Fischer by telephone, who checked them out.

"B. *Project Problems*

"I was disappointed that no more than four of my students were interested in working on this project. However, I was able to interest two students from another teacher's class to join them. It was also difficult to get transportation for the training session which occurred on a school holiday.

"C. *Project Evaluation*

"1. A toy safety drive provides opportunities for students to discover the reason for a particular law and methods of enforcing it.

"2. The project enables students to work closely with law enforcement officials and merchants in the community.

"3. The project provides a means for students to learn how to conduct a proper survey: how to approach the store manager, how to prepare survey sheets on a clip board, how to check systematically, and how to tabulate results.

"4. The project offers a means for students to work together and function cooperatively.

"5. The project has also involved several parents.

"6. The project helps students learn the positive and protective aspects of law."

(See Objective 0.1, 0.2, 0.5, 0.14, 1.1, 1.3, 1.6, 1.7, 2.2, 2.7, 2.8, 2.11, and 9.3.)

- 126 -

CLARIFICATION OF A CONCEPT ("AUTHORITY")

1. Given a limited period of time, students working in dyads must come to an agreement on what the concept "authority" means. They also relate to one another the name and position of someone who has exercised authority in their lives.

2. Students move into groups of four by combining two dyads, again coming to an agreement within a given time on a definition of "authority". Students must also agree on 5 well-recognized figures of authority and five well known authoritarians.

3. Each group reports orally on conclusions to the teacher or a student, who records conclusions on chalkboard. What commonalities are there? Can there be agreement or consensus within the total class on what "authority" means. In ensuing discussion differences of opinion may occur regarding who is "authoritarian" and who is an "authority". Can one be both?

The above activity shows how a concept may be developed in class. Other law-related concepts, such as "freedom," "equality," "human dignity," "due process of law," "crime," "law," "rules," "appeals," and "judge," could be developed using similar strategies.

(See Objectives 0.1, 0.5, 1.8, 2.1, 3.2, 4.5, 7.1, 8.1, and 9.1.)

- 127 -

RIGHTS AND PRIVILEGES — RESPONSIBILITIES AND OBLIGATIONS

Have students fill out and discuss charts like those below:

Chart A

Rights (see Bill of Rights to U.S. Constitution)	Responsibilities that should accompany each right (What do you think?)

Chart B

Privilege or Right	Responsibilities or obligations that do or should accompany each privilege or right
Possession of school lockers	
Attend school	
Serve as representative on the school's student council	
Driving a car (or riding a bicycle)	
Take date to party	
Voting in school election	
(Teacher and/or students should include privileges and/or rights appropriate to the age level.)	

(See Objectives 0.1, 0.14, 1.1, 1.3, 1.6, and 9.3.)

INVESTIGATION OF TRAFFIC COURT

A student can participate in this activity on his own or as part of a class field trip. The questions in the box below can serve as guidelines to make a visit to traffic court more meaningful.

1. Visit your local traffic court.
2. Take notes on the procedure used.

3. What types of cases are on the docket?
4. How many of each?
5. What penalties are given? How are they decided?
6. What choice does an accused speeder have, if he believes he is not guilty?
7. If he admits he is guilty, what must he do? How is his punishment decided?
8. What choice does he have if he thinks the punishment is unfair?
9. How is the information entered on the court record?
10. When the fine is paid, where does the money go?

(See Objectives 0.1, 0.5, 1.1, 2.8, 3.2, 3.11, 7.1, and 7.3.)

- 129 -

OBSERVING AN ADMINISTRATIVE GOVERNMENTAL BODY

See the sheet reproduced below for guidelines to learning how a local governmental body makes proposals for laws. Students can carry out activity on their own or as part of a field trip. The sheet has been used in a St. Louis County school district.

Activity 1

1. Look up the schedule of meetings for your local government: Kirkwood City Council, Glendale Board of Aldermen, St. Louis County Council, etc.
2. Attend the meeting of this governmental body. Bring back an agenda and notes from the meeting.
3. Analyze the types of problems that were dealt with. How many were solved? How were they solved?
4. Who are the members of this agency? What is their term of office? How were they selected for this office? What are their duties?

Activity 1A

Attend these meetings regularly for a period of time. How effective is this governmental agency? Explain.

Activity 1B

Follow the above procedure for two of the agencies and compare them.

Activity 2

1. Select an item that seems interesting to you from the agenda for a governmental agency meeting.
2. Research the background for this item: use the local newspaper, the city clerk, residents of the community, your parents.

   Who brought up this proposal?
   How long has it been under discussion?
   Who will be affected by it?
   Who is in favor of it?
   Who is opposed to it?

3. Ask for an interview with the person who first proposed this matter. How did he go about it? Why? Where did he get the idea?
4. Has someone been appointed to study this proposal? What changes would be brought about if this proposal is passed? How much will it cost?
5. Make a collection of newspaper clippings on this proposal.
6. Keep a record of all the answers to these questions.

(See Objectives 0.1, 0.2, 0.3, 0.5, 0.14, 1.6, 2.2, 2.7, 2.8, 2.11, 2.12, and 2.14.)

- 130 -

ANALYSIS OF LOCAL CRIME TRENDS

Using statistics researched from local police department, students will plot on a map of the community places where crimes occur, noting type of crime and number of times the crime occurs. Students may also show crime trends by making bar graphs or other graphic figures. Students will analyze and hypothesize reasons for the crime patterns they have discovered. Students will consider possible ways to reduce local crime.

(See Objectives 0.1, 0.2, 0.3, 0.4, 0.5, 0.6, 0.14, 1.3, 1.4, 1.5, 1.6, 2.1, 8.3, 8.7, 8.8, 8.9, 8.10, 8.11, and 8.12.)

- 131 -

VOLUNTEER SERVICE IN LAW-RELATED POSITIONS

Students may:

1. Volunteer to work in the local police department — e.g. filing bicycle registration forms.

2. Observe the police on the job in the local "ride along program," if such a program exists locally.

3. Take part in police youth oriented activities on Halloween — e.g. a haunted house manned all week by volunteers.

4. Survey local community for hazardous intersections which need attention — weeds or shrubs or trees impairing vision (which need to be removed) — etc.

5. Volunteer to work in local police community related programs.

Students will report on human relationships involved between police and citizens and hypothesize their own responsibility within the community.

(See Objectives 0.1, 0.2, 0.14, 1.1, 1.3, 2.8, and 9.3.)

- 132 -

INVOLVEMENT IN INITIATIVE PROCESS: ONE WAY THE INDIVIDUAL CAN PARTICIPATE DIRECTLY IN MAKING AND CHANGING LAW

Students may take part in an initiative petition drive by joining a group already formulated to work toward this end, or they may investigate how the initiative process works. Students will predict and analyze the consequences which might result from the proposed change.

(See Objectives 0.1, 0.2, 0.3, 0.4, 0.5, 0.6, 0.7, 0.9, 0.10, 0.11, 0.12, 0.13, 0.14, 1.4, 2.12, 2.13. 2.14, 9.4, and 9.3.)

- 133 -

INTERDISCIPLINARY MOCK LEGISLATURE FOR SOCIAL STUDIES, MATH, SCIENCE AND ENGLISH CLASSES

During a Mock Legislature these objectives may be accomplished:

Objectives for Social Studies:

1. Students will identify and use properly the terms and vocabulary connected with the legislative process.

2. Students will apply their knowledge of the legislative process — how a bill becomes a law — by participating in a mock legislature.

3. Students will evaluate the influence of pressure groups and lobbyists upon the legislative process.

Objectives for Mathematics:

1. Students will collect data to illustrate arguments which will support or oppose a bill.

2. Such data can be used to make charts showing frequency distributions; to describe

sample populations and their relation to the entire population; to construct bar, line, and circle graphs or pictographs; to compute percentages.

Objectives for Science:

1. Students will use scientific methods of research and problem solving in making careful and logical observations about their environment and in predicting how impending legislation may affect it.

2. Students will develop an awareness of the social and legal implications involved in the applications of science.

Objectives for English:

Students will practice communication skills: research, note taking, public speaking, listening skills, etc.

Objectives may be accomplished for other subject areas, such as home economics and driver's education, as well.

(See Objectives 0.1, 0.4, 0.5, 0.13, 0.14, 1.3, 1.4, 1.5, 1.6, 1.7, 2.2, 2.6, 2.7, 2.8, 2.11, 2.12, 2.14, 9.3, 9.4, and 9.5.)

- 134 -

JUVENILE CODE STUDY

Students will study and analyze the juvenile code of Missouri, weighing the advantages of its protective aspects against its disadvantages of lack of rights.

1. Students will visit detention and correctional institutions, making detailed comparisons.

2. Students will interview juvenile officers, judges, probation officers, social workers, juveniles, etc.

3. Students will study and analyze the juvenile code itself, consulting authorities who can help interpret the code.

4. Students will list what they consider to be the pluses and minuses of juvenile code.

(See Objectives 0.1, 0.2, 0.3, 0.4, 0.5, 0.8, 0.9, 0.10, 0.11, 0.12, 6.1, 6.2, 6.3, 6.4, 9.4, and 9.5.)

- 135 -

ROLE OF THE CITIZEN IN JURY SYSTEM

1. Students will investigate how jurors are selected in their community.

a. This method of jury selection may be compared with another community, state or nation.

b. In Math class, students may figure the odds of any individual's being called for jury duty.

c. Students may make a study of actual juries over a period of time: how many men, women, black, young, old, long-haired, etc. appear on juries in the community.

2. Students will read articles on demographic make-up of juries and how sociologists and psychologists assist lawyers during voir dire in jury panel selection. Such articles have appeared in *Psychology Today* (May, 1973 and May, 1975) and in *Newsweek* during 1975, and may be located using the *Reader's Guide to Periodical Literature*. (The rape case of Jo Ann Little is one where "scientific jury empaneling" was applied. Students could use newspapers from that case to find how the jury was selected.)

3. Students will debate or discuss the following quotation: "Public participation — as in the jury trial — is the cornerstone in the administration of justice and vital to our system of law (June Lapp. *Psychology Today*, May, 1975)."

4. Students might respond to the question: What type of juror would you want to judge you?

(See Objectives 0.1, 0.2, 0.5, 0.8, 0.9, 1.1, 1.3, 1.4, 1.6, 2.9, 3.3, and 3.12.)

- 136 -

THE MIKADO — LET THE PUNISHMENT FIT THE CRIME

The teacher introduces the unit by (a) telling the students about Gilbert and Sullivan and the social mores that existed at their time or by, (b) having the students investigate those topics.

1. Play a recording of *The Mikado* by Gilbert and Sullivan, or have the students attend a live performance, if possible.

2. The following are questions for discussion or investigation, which may be considered after students hear the performance:

Who made all of the laws?

Who saw that the laws were carried out?

Were the laws just?

To whom did a condemned person go for aid if he disagreed with the punishment?

Compare some of the legal processes of English law that existed in 1871 with some laws that were satirized in *The Mikado*.

Are there any countries today that might have a parallel of the benevolent Mikado?

Do we have any composers today who are trying to change laws that are unpopular through satire?

In view of the laws of today in our country and the rising crime rate, do you feel that punishment should fit the crime in the same way as the Mikado dispensed justice?

(See Objectives 0.1, 0.5, 0.8, 0.9, 2.3, and 8.8.)

- 137 -

CHILDREN'S LITERATURE AND THE CONCEPT OF FAIRNESS

Stories often present dilemmas in which a fair solution to a problem is often hard to obtain. Role plays of solutions to such problems or discussions of solutions should help students understand the complications involved in some situations. For example, in Dr. Seuss' story *Horton Hatches the Egg*, just before the end of the story Maize, the irresponsible, lazy bird, tells Horton to give her back the egg Horton has cared for. The egg was laid by Maize; yet Horton was the one who made sacrifices to take care of the egg as if it were his. One way to put the question is: "To whom should the baby be given, the natural mother or the one who took the best care of the baby?" Several other of Dr. Seuss's stories also may be related to law-focused education (for example, *Yertle the Turtle*, *The Zax*, *The Sneetches*, and others.)

Other good dilemmas may be found in the set of filmstrips with sound put out by Guidance Associates called *First Things: Values*.

(See Objectives 0.1, 0.4, 0.6, 0.8, 0.9, and 0.10.)

- 138 -

ART AND MILESTONES IN THE DEVELOPMENT OF DUE PROCESS OF LAW

1. Work together to make a chronological list of historical milestones in the legal process (e.g., the Magna Carta, Bill of Rights, etc.).

2. Find pictures in books, magazines, papers, and slides by artists which illustrate the list above.

3. Investigate these matters:

   a. What do you infer was the artist's point of view toward the event? Do you share the same point of view?

   b. Did the artist put himself in jeopardy in his day by making the painting?

c. Was the artist's work influential in affecting people's notions of justice?

4. As an alternative to he above, the class could look for paintings that show the need for a system of law and due process of law. Questions similar to those in # 3 above could be explored for those works.

(See Objectives 0.1, 0.5, 1.1, 1.3, 7.1, 7.4, and 7.5.)

- 139 -

DUE PROCESS AND ALIENS AS CITIZENS

The Fourteenth Amendment sets forth that all persons born in the U.S. are citizens of the nation, and others may become citizens through naturalization. In the U.S. aliens have approximately the same rights in matters of personal freedom as do citizens. Compre these rights with the rights of aliens in France, Great Britain, Russia, or other countries.

To obtain data on rights of aliens, the students or the librarian could write the Consulate General of the county to find out about rights and obligations of citizens and aliens in the particular country. The Consulate General's office probably has pamphlets written specifically for American tourists. Addresses of those officers may be found in the publication *The Travel Planner*, which may be found at most travel agencies.

(See Objectives 0.1, 0.5, 7.5, 9.2, and 9.7.)

- 140 -

AGE AND SUPREME COURT JUDGES

In many jobs employees must retire at age 65 or thereabouts. Is such a mandatory retirement age desirable? What are arguments on both sides? The following are questions to be investigated regarding mandatory retirement and the Supreme Court:

1. Is there a minimum age for Supreme Court Justices? A maximum age?

2. Make a list of the ages of our present Supreme Court Justices.

3. Do you feel that age is important in determining who shall help interpret the laws of this country? What are your reasons?

4. Should retirement at a certain age be mandatory for Supreme Court Justices? Have students consider what kinds of evidence they would need to help them make a sound decision. They could write position papers or debate the issue.

The above investigations could be related to the Supreme Court packing controversy during Franklin Roosevelt's presidency.

(See Objectives 0.1, 0.2, 0.4, 0.5, 0.6, 1.4, and 5.2.)

FREE PRESS IN SCHOOL

Read the following story and use follow-up strategies with students similar to those that follow the story.

School Newspaper

Fred, a senior in high school, wanted to publish a mimeographed newspaper for students so that he could express many of his opinions. He wanted to speak out against the war in Vietnam and against some of the school's rules, like the rule forbidding boys to wear long hair.

When Fred started his newspaper, he asked his principal, Mr. Clyde, for permission. Mr. Clyde said it would be all right if before everf publication Fred would turn in all his articles for his approval. Fred agreed and turned in several articles for approval. Mr. Clyde approved all of them, and Fred published two issues of the paper in the next two weeks.

But Mr. Clyde had not expected that Fred's newspaper would receive so much attention. Students were so excited by the paper that they began to organize protests aginst the hair regulation and other school rules. Angry parents objected to Fred's opinions, and telephoned Mr. Clyde to tell him that the newspaper was unpatriotic and should not be published. As a result of the rising excitement, Mr. Clyde ordered Fred to stop publishing. He gave as a reason that Fred's activities were disruptive to the operation of the school.

Do you think Mr. Clyde should stop the newspaper? (check one)

_______Should stop it

_______Can't decide

_______Should not stop it

Suggestions for using as a teaching tool:

1. Identify Fred's rights and responsibilities in this situation, as these are defined in Missouri Laws.

2. Identify the rights and responsibilities of the principal, as these are defined in Missouri laws. Was the agreement between Fred and the principal a binding one?

3. Answer the question at the end as if you were Mr. Clyde, and explain your decision. What other options would you have in this incident? What consequences would you predict would follow from each of those options?

4. Have the students role play the incident with #1 and #2 above in mind, changing the ending to fit the option they consider to be most appropriate.

(See Objectives 0.1, 0.2, 0.4, 0.5, 0.6, 0.7, 0.8, 0.9, 0.10, 0.11, 0.12, 1.3, 1.4, 1.5, 1.6, 1.7, 9.4, and 9.5.)

- 142 -

STUDENT SUSPENSIONS AND DUE PROCESS

Discuss with appropriate school officials the current district rules for suspending a student and the reasons for these.

Study the case of Goss v. Lopez (U.S. Supreme Court, 1974) and the standards in that decision settled by the court to protect student rights to due process at a suspension hearing. Students may brief the case. (For background information on the Goss case the teacher could obtain Ronald Anson's article "The Educator's Response to *Goss* and *Wood" (Phi Delta Kappan*, Sept. 1975, pp. 16-19.) In the ACLU pamphlet "Student Rights in Missouri" study the steps in a suspension hearing required by Missouri law prior to a suspension.

Have class identify and discuss the differences. Which set of standards or procedures **best** protects the right of the student to "a fair hearing"? Why would these differences exist, and which standards would apply in Missouri?

Consider how a suspension hearing is different from a criminal trial, though both involve breaking a rule of law. Do students have the right to appeal the verdict in a hearing and how would this be done?

(See Objectives 0.1, 0.2, 0.4, 0.5, 0.6, 0.7, 0.9, 0.10, 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 7.6, 7.7, 9.4, and 9.5.)

- 143 -

RULES AND LAWS RELATED TO VOTING

Divide the class into groups, give each group the "Voting Questionnaire" shown in the box below, and have each group make decisions on answers for each question, following which the entire class should listen to the answers of each group and try to reach agreement in the answer for each question.

VOTING QUESTIONNAIRE

1. What amendment was written to prohibit racial discrimination in voting?
2. How often must an individual register for voting provided that he does not move?
3. What time do the voting polls open?
4. How many ballot boxes with lock and key are used in each precinct?
5. Unless there were less than 200 votes cast at the next to the last preceding general election, each party will have _____ judges and _____clerks.
6. (True or False) At least one instruction card for voters should be placed in each booth and not less than three such cards should be placed elsewhere in and about the polling place

7. If you were leaving town on the morning of election, could you vote at 5:55 a.m.?

8. How does a judge know that you have registered?

9. (True or False) A voter must sign his signature on an identification card before he is presented a ballot.

10. (True or False) Judges are held guilty of a misdemeanor, and if convicted, are fined $500 if the ballot box is not constantly in public view.

11. (True or False) Any person who directly or indirectly attempts to influence a voter or hinder the voter's rights is guilty of misdemeanor.

12. (True or False) A friend, not of voting age, may accompany you to the booth to vote.

13. What type of mark is used to mark a ballot?

14. How does one mark a ballot for a straight ticket in the general election?

15. What is the correct procedure for marking a ballot for a "split ticket" in the general election?

16. What is the date of a general election?

17. If you spoil your ballot, what do you do? (a) write an explanation at the bottom of the ballot, (b) lose your chance to vote until the next election, or (c) ask for another ballot.

18. What time do the polls close?

19. What is the date of a primary election?

20. What is the minimum age of a school board member in Mo.?

21. Board members are elected for a term of ________ years.

22. What is the latest time in which one may apply for an absentee ballot?

23. Is it necessary to fold your ballot before leaving the voting booth?

24. Does the voter hand the ballot to a clerk in charge or place it in the ballot box?

25. If the clerks and judges personally know you, could you vote without having registered?

26. If you decide, after looking over the ballot, that you don't want to vote, w at do you do with the ballot?

Then pose a question like this, "We decided on right answers using majority rule or group consensus. Can we be sure all of our answers were correct? How can we check the accuracy of our answers?" One lead worth exploring is to contact the office of the nearest County Voter Registration Office. The students may suggest other leads that should be investigated. By having them propose ways to find correct answers and having them explore those ways, the students should learn something more important than correct answers. They should learn how to carry out their own investigations of such matters.

You could follow this activity with a discussion or debate on whether voting is not only a right, but an obligation as well.

(See Objectives 0.1, 0.2, 0.3, 0.5, 0.6, 1.1, 1.3, 1.6, and 1.7.)

FREE SPEECH IN SCHOOL

Below is an account of the case of Tinker v. The Des Moines Independent Community School District:

> John F. Tinker, 15 years old, Christopher Eckhardt, 16 years old, and Mary Beth Tinker, John's 13 year old sister, were students in the Des Moines Public Schools. John and Christopher were senior high school students and Mary Beth a junior high school student in 1969.
>
> In December of that year a group of adults and students held a meeting at the Eckhardt home and decided to publicize their objections to the war in Vietnam by wearing black armbands during the holiday season and by fasting on December 16th and New Year's Eve. The three students and their parents, who had previously engaged in similar activities, decided to participate in the activities of the group.
>
> The principals of the Des Moines Public Schools became aware of the plan to wear armbands, and on December 14th they met and adopted a policy that any student wearing an armband to school would be asked to remove it. If the student refused, he would be suspended until he returned to school without the armband. All students and their parents were informed about the new regulation.
>
> On December 16 Mary Beth and Christopher wore black armbands to their schools. John wore his armband the next day. They were all sent home and suspended from school until they would return without their armbands. There was no disturbance in the schools, or in the classrooms when the three students appeared with their armbands. They did not return to school, however, until after the planned period for wearing the armbands was over — that is, until after New Year's day.

Follow-up activities:

1. Identify the specific legal issues in this case. Also identify what rights and/or responsibilities are in conflict here.

2. Develop the arguments which the school principals could have used to justify their policy, and to suspend the students.

3. Develop the arguments which could have been used to defend the right of the students to wear the armbands in school.

4. Develop a mock trial of this case to be used by your class. (As teacher planning the mock trial activity, identify first what legal concepts you want the students to understand from participating in the mock trial. Then outline all the roles for a full court hearing of the case. (see Activity 214). You may use panels of judges and of lawyers for the plaintiffs and the defendants in order to involve as many students as possible. Students may also be asked to do further reading regarding the case. It was heard and decided by the U.S. Supreme Court.)

You might want to invite a lawyer or a law student to come to your class to help set up, conduct, and debrief your mock trial. Compare the student's arguments and decision with those of the U.S. Supreme Court.

(See Objectives 0.1, 0.2, 0.3, 0.4, 0.5, 0.6, 0.7, 0.10, 0.11, 0.12, 1.3, 1.4, 1.6, 1.7, 3.2, 3.9, 3.11, 5.5, 9.4, and 9.5.)

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RULES FOR SHARING SCARCE RESOURCES

Young children often have an intuitive feeling for the need for rules and for fair solutions to conflicts among themselves. Some teachers have involved young children in helping formulate basic classroom rules. For example, some have placed children into reading groups and allowed those groups to proceed without rules. The result is that the children felt so uncomfortable with the chaos that they gladly participated in trying to set up rules guaranteeing each child's opportunity to participate equally in group activities. Rules could also be set up on how scarce resources, like games and tricycles, could be used in a way assuring that everyone would get a chance to have access to those materials. The need for such rules, of course, is more obvious after a conflict over the scarce resources has taken place.

(See Objectives 0.1, 0.8, 0.9, 0.13, 1.3, 1.4, 1.5, and 1.6.)

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TRAFFIC LAW ENFORCEMENT

Identify different kinds of traffic laws and describe their purposes. Contrast the reason for and the benefits to those individuals who obey the laws as opposed to those who disobey them. Identify the strengths and weaknesses of the program of traffic law enforcement in the community. Describe the function of traffic police. Consider why people commit traffic violations. Invite a city traffic court judge to speak. When given a case description, have students try to predict what will happen at the traffic court.

Films: *Traffic Patrol — Its Nature and Purposes*, and *Wisconsin Patrols for Safety.*

Booklet: "Your Rights in Traffic Court" (Missouri Bar)

(See Objectives 0.1, 0.2, 0.5, 1.1, 1.3, 1.4, 1.6, 1.7, 3.3, and 9.3.)

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NATURALIZATION

Learn how one becomes a citizen (by either birth or naturalization). Learn that there are no barriers to citizenship because of race, sex, or age.

Read the oath of naturalization to the children. Discuss some key words: "allegiance," "constitution," "laws," "foreign," "alien," "domestic." Explain the nature of the ceremony as being patriotic (a flag is given). Discuss other patriotic ceremonies with which they are familiar: the Pledge of Allegiance, parades on special days, plays, pageants, etc. to depict patriotic events in history.

Encourage children to get help at home in determining where their ancestors came from and when they became citizens.

Make up a puppet show or playlet depicting the naturalization ceremony; include judge and other interested spectators as well as prospective citizens.

Write a paragraph on what it means to be a citizen. This may be a class project with the more able students helping to record the ideas of the group on a large paper chart.

(See Objectives 0.1, 1.1, 1.3, and 2.4.)

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IF THERE IS A CRASH . . .

This activity should help students understand what to do in post-crash situations in order to minimize human suffering, financial loss, legal complications, and other undesirable consequences.

Have students construct an accident scene and role play the individuals involved. Discuss actions needed which pertain to stopping at the accident scene, conversation, exchanging information, marking the accident scene, and summoning assistance. Also consider and investigate the extent to which the law permits assistance to victims of accidents. Describe actions which are necessary to insure that other accidents and injuries will not occur on the same location.

For a resource obtain copies of the booklet "What to Do in Case of an Automobile Accident" from The Missouri Bar for your students and/or invite a local attorney to your class to discuss this topic with your students.

(See Objectives 0.1, 0.5, 0.14, 1.1, 1.3, and 9.3.)

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THE CLASSROOM COURT

Have students develop rules for their classroom conduct. As violations or conflicts arise, have a judge and jury of students hear the case and pronounce judgment. Point out the necessity for the judge and jurors to listen carefully to the students as they present both sides of the issue. As part of this activity students should learn the definitions of legal terms like "due process," "crime," "law," "rules," "judge," "jury," "trial sentencing," "defense attorney," "lawsuit," "prosecuting attorney," "preliminary hearings," "jurisdiction," "appeals," "felony," and "misdemeanor."

There are problems with the above activity which the students need to understand. Not all violations of law or all disputes in the adult world are handled by trial. Trials take much court time and money. Consequently, if disputes can be handled out of court, or if an accused person pleads guilty and waives his right to trial, the trial will not take place. Minor infractions of traffic law also are not handled by trial in most cases. Thus, the teacher and class will need to decide if all violations of classroom rules will be tried by the classroom court. If all violations would be tried, it is likely that so much time will be spent on the trials that other learning will suffer and that students will develop the misconception that all violations of law and all disputes result in trial by jury.

Another problem is that in many cases it may be impossible to get an impartial jury, since students know each other so well and may presume guilt or innocence before the trial starts.

(See Objectives 0.1, 0.6, 0.7, 0.9, 1.1, 1.3, 3.1, 3.2, 3.3, 3.4, 3.5, 3.9, and 3.12.)

- 150 -

NOTTY PROBLEMS BETWEEN PARENTS AND CHILD

Divide class into groups of 3 or 4 students per group. Let them draw a slip of paper describing a situation between a child and his or her parent or guardian, like those listed in the box below, wherein parental authority might be exercised.

A child brings home a poor report card. The parents attempt to do something to get the child to do better in school.

A parent attempts to do something about a brother and sister fighting all the time.

A mother discusses with her daughter her daughter's plans to go to a party. The mother disapproves of the party.

A parent is upset with a child who comes home very late without having let anyone know where he was.

A foster parent deals with a foster child who has run away.

A father finds a valuable object in the child's possession and believes that the child has stolen it.

A student wants to get money from his parents to go someplace. His parents feel that he should earn the money.

The school calls home and informs the parent that his child has been suspended for fighting.

Parents want to visit a relative and want the child to go along. The child does not want to go.

Parents are upset because a child constantly forgets to do his chores. The parents try to find some way to insure that he does the chores.

A parents suspects that his child has been experimenting with drugs. He confronts his child with his suspicions.

Then, after 15-20 minute preparation have each group role play its conflict. Following each role play, have a discussion using questions like these:

1. Did the parent have the right to be concerned and take action?

2. Do all students approve of the way the group handled the situation in their role playing? Are there other means of handling the situation? What factors need to be considered in trying to manage a possible conflict?

3. Have any of the students had similar conflicts? How were they solved. (Emphasize to students the imporance of their right to privacy, and consequently their right not to answer this question publicly.)

4. If parents and children are unable to resolve conflict, are there others they could turn to for help, such as school authorities, city or county officials, the police, the juvenile court?

5. What authority, if any, should an outside agency have in making a decision in this conflict.

(See Objectives 0.1, 0.4, 0.6, 0.8, 0.9, 0.10, 0.11, 1.1, 1.3, 1.4, 1.5, 1.6, 1.7, 2.2, 6.4, and 9.3.)

- 151 -

LAW AND SEX DISCRIMINATION

Cite an instance in which a woman has been discriminated against on the job or other situations. Students can contribute personal family experiences. Investigate how law has affected sex discrimination in recent years, and discuss the merits of such antidiscrimination law.

For guest speakers consider:

The League of Women voters

Business and Professional Womens Group

Someone from the American Association of University Women

A woman attorney

An employee from the Division of Employment Security, who is involved in job placement for women.

A school official who has responsibility to see that girl students or women faculty members are not discriminated against. (The district's federal funds are placed in jeopardy if the district allows discrimination based on sex.)

A speaker from the American Civil Liberties Union.

(See Objectives 0.1, 0.2, 0.3, 0.4, 0.5, 0.6, 0.8, 0.9, 0.10, 0.11, 0.12, 0.14, 1.1, 1.3, 1.4, 1.6, 1.7, 2.9, 9.1, and 9.3.)

- 152 -

UNFAIR TREATMENT UNDER LAW

Students bring to class in writing examples of family experiences, observations, news articles in which they felt a person did not receive fair treatment by a court action, police officer, judge, government official, or fellow citizen. Following discussion have students, individually, in small groups, or as a class, attempt to fill in the chart below:

Shortcoming	Possible Causes	Likely Consequences	Proposed Remedy

(See Objectives 0.1, 0.2, 0.3, 0.4, 0.5, 0.6, 0.8, 0.9, 0.10, 0.11, 0.14, 1.4, 1.5, 2.6, 2.11, 2.13, 3.1, 3.2, 3.3, 3.4, 4.5, 7.1, 7.4, 7.7, 9.3, 9.4, and 9.5.)

- 153 -

WHY TAXES?

Consider the social benefits made possible by the collection of taxes. A single large group session may be used for introduction followed by the class being divided into teams.

One or two groups could search local newspapers and periodicals to find examples of how tax money is spent. One or two groups could interview the school district director of finance, a board member, or other persons concerned with the school budget. One or more groups could interview other government officials to learn what services are made possible by tax collected monies.

Organize team findings for presentation in a symposium followed by a summary given by one person. Allow time for individual questions or comments.

Such social benefits could include education, roads, and public libraries. A local or county tax statement could be used for items families benefit from through the taxes they pay.

(See Objectives 0.1, 1.1, 1.3, 1.6, and 1.7.)

- 154 -

ELECTED OR APPOINTED? A GAME

Obtain three 5 x 7 cards, and write the words "Elected Government Official" on the first card, "Appointed Government official" on the second card and "Not a Government official," on the third card. On 3 x 5 cards write the following words:

Lawyer
Circuit Court Judge
Policeman
County Clerk
Supreme Court Justice
Mayor
Nurse
Senator
Principal
Teacher
Doctor
President
Sheriff
Carpenter
County Treasurer
Representative
Dentist
Dog Catcher
Presiding Judge of County Court
School Board Member
Bus Driver

(More words may be added)

Place the larger cards, words up, on a table, on the floor, or on the bulletin board. Place the smaller cards face down. Each player draws a card, pronounces the word, then places it under the correct title, "Elected Government Officials," "Appointed Government Officials" or "Not a Government Official." This activity can also be used on the chalkboard. In such a case, the player may go to the board and write his word under the correct title. The player who pronounces and classifies the most words correctly is the winner.

(See Objectives 0.1, 1.1, 1.7, and 2.2.)

- 155 -

"YOU BE THE JUDGE"

A. Select two pupils, who will stand at front of class, and tell the class that they are going to get to act as classroom judges. Explain to the students that you are going to tell the story about each of these two "juvenile offenders," and you then want them to decide what their punishments should be.

#1 juvenile — "This child has a **record** of offenses She has been reported many times for skipping steps talking on stairs and in lines, and chewing gum in class. Today, she has admitted to throwing an eraser out the window."

Say to the juvenile, "Do you have anything to say for yourself?"

#2 juvenile — "This child has no record of offenses. In fact, she has tried very hard to obey all class rules, which isn't always easy. But today, she just couldn't resist. It just seemed a great idea to throw that eraser out the window, at her girlfriend who was taking gym class in the school yard.

Say to juvenile, "Do you have any thing to say for yourself?"

Now ask class what they think the punishments should be, keeping in mind that both committed the same offense. Encourage them to share their ideas and to react to each other.

B. Now tell the class: "You are going to see three different cases concerning juveniles, and you will again have the opportunity to act as judges. This time we will see what the real juvenile judge decided, and you will be able to compare your decision with the judge's."

Show the film *You be the Judge*. Midway through the film, the machine may be turned off for discussion. Review each case considering (a) the seriousness of the offense and (b) the background of the offenders.

At this time, students should review the procedure used by police at the time of arrest. List steps on board, as students dictate:

1. At this time the juvenile is notified or rights.

2. The juvenile is asked if he understands his rights.

3. He is taken to the police station.

4. His parents are telephoned. (He is either sent to Detention or sent home in custody of parents.)

5. He has a hearing in juvenile court (the juvenile may have a lawyer.)

6. The judge decides on the course of action.

Show completion of film. Allow class to discuss any parts of film. Ask the class: "Do you feel the judge's decisions were fair?"

Students may want to make a more permanent listing of the steps used in the "Procedure for Arresting Juveniles" to be used in future role-playing or picture-story activities. Students should recognize the justice used by the courts, as well as the police, in dealing with juvenile offenders.

C. Someone from the juvenile court could be invited at the end of this activity to discuss his work, discuss how penalties are decided, and answer questions.

(See Objectives 0.1, 0.6, 0.7, 0.9, and 6.3.)

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ENDANGERED SPECIES

Make a list of species of American wildlife. Discuss what consequences would follow if no laws were made to protect them. Each child will select five animals from the list and make a notebook of information concerning these five. They will make drawings of the five animals they selected. Students will copy the laws and the hunting seasons for their five selected animals for their notebooks. Oral reports will be given by all students on one of the five selected animals. These will be assigned in advance so duplications will be avoided. Their drawing will be displayed while the report is being given.

The class could also discuss problems that result from poaching and the difficulties of making law to protect some species, such as sea otters and blue whales, which live on the high seas.

Conservation agents and hunting groups like Ducks Unlimited could probably be used as resources.

(See Objectives 0.1, 0.2, 0.3, 0.4, 0.5, 0.11, 1.1, 1.3, 1.4, 1.5, 1.6, and 1.7.)

- 157 -

BOND OR BAIL

Assign a member of committee of students to interview a judge about how much bail or bond is required for specific offenses. Report these findings to the class.

Invite a professional bondsman to visit class to explain the procedures to secure bond or bail including charges.

Consider what functions are played by bail? What are other alternatives? Are those alternatives being used? How are they working? Investigation of these topics could involve both interviews of the judge and library research using the *Reader's Guide to Periodical Literature* and the library's card catalogue.

(See Objectives 0.1, 0.2, 0.3, 0.4, 0.5, 0.6, 1.3, 1.4, 1.5, 1.6, 2.9, 7.3, 8.5, 8.8, 8.10, 8.11, and 9.4.)

- 158 -

LAW ARTICLE SCRAPBOOK

For one month keep a scrap book of articles dealing with the part law plays in our everyday lives. Divide the book into the different courts, and place the articles under the proper court. Discuss the different courts at the end of the month.

An alternative is to collect the articles and place them in order by date. Then, ask students how they would organize their scrapbooks. Some may do so using different courts, as suggested above; others may use different organizing concepts (criminal vs. civil cases; cases involving topics like ecology, political corruption, felonies, traffic violations; etc.)

(See Objectives 0.1, 0.2, 0.3, 0.5, 1.1, 1.3, 1.6, 2.9, 4.2, and 4.3.)

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DAYLIGHT SAVINGS TIME

Have a discussion on purpose of daylight savings time. Research states not participating in the program. List advantages and disadvantages. Identify objectives of law makers in passing the law. Students could debate the merits of daylight savings time.

(See Objectives 0.1, 0.2, 0.4, 0.5, 0.6, 1.1, 1.3, 1.4, 1.6, 1.7, and 2.9.)

- 160 -

CHILD OR ADULT? — A MORAL DILEMMA

Read the following story to the class:

> Anne had just had her 12th birthday. She had received $2.00 from her father. He had told her that the money was for Anne and her best friend, Mary, to go to a movie.
>
> When the girls arrived at the theater, they noticed that the sign read:
> $1.00 for adults (12 yrs. and over)
> $ .50 for children
>
> Even though both girls were 12 years old, Mary suggested that they buy children's tickets, so that they would each have 50¢ for popcorn and soda. Anne did not agree.

Ask for three volunteers to role play the two girls and the theater owner. After the role playing, ask the class to comment on the reasoning of the two girls. Bring out the following points:

1. Does it make a difference whether the theater owner receives the money for admission or food? (Have student who plays the theater owner answer the question.)

2. What difference would it make to the owner if fifty other 12 year olds did the same thing?

3. How would other 12 year olds feel if they had paid adult admission?

4. How would her father feel about her decision?

5. Can you think of any situations when you were faced with similar decisions?

Give students sheets of white paper, instructing them to fold paper into fourths. Ask students to draw three scenes telling the story of Anne and Mary, cartoon style. The fourth box is for the final decision, made by the girls. "Tell how you think it turned out!"

(See Objectives 0.1, 0.8, 0.9, 0.10, 0.11, 0.12, 0.14, 1.3, 1.6, 9.3, 9.4, 9.5, and 9.6.)

- 161 -

RESPECT FOR PROPERTY

(A key is placed under an eraser on the chalk ledge.) Tell the class that somewhere in the classroom you have lost your keys, which are very important to you. Ask the class to help you find them. When the keys are found, ask students to guess why they are of such value to you.

Now ask if anyone in the room has something at school today which is very valuable to him or her? Then ask those students if they suddenly discovered that their valued items are missing, and they searched their desks, what would they do? Have a few students hold up their items, and ask the class if they think their items are valuable. Next, you might announce that those items are of no value to you, and you might add, "Why should I stop and help search for these items, which are of no value to me?" "Why did you search for the lost keys, when they are of little value to you?"

As a homework assignment you could ask students to find an article that describes a theft. Ask them to write a fictional story telling how the person felt when he or she found his or her valued item(s) were missing or damaged. The stories could be read in class and discussed.

(See Objectives 0.1, 0.9, 0.10, 1.3, and 1.6.)

- 162 -

THE CASE OF THE UNCOMPLETED MATH HOMEWORK: A MOCK TRIAL

The teacher should first select a good-natured defendant, a judge, and a prosecuting attorney and then read the following narrative to the class.

"I have sworn out a complaint against the defendant for failing to do his math homework for three days in a row, and the prosecuting attorney has filed charges against the defendant for this crime in the appropriate court of law. The defendant does not feel that he has committed the crime as charged, has pleaded not guilty to the charges, and asks that he receive his constitutional right to a trial by jury."

Actual play by the actors begins here:

The judge will set a date for the trial to begin but first a jury must be impaneled. A group of about 20 students should be ready as potential jurors. Prior to seating each jury member both the prosecutor and the defense attorney should have the opportunity to ask questions of each to determine if the juror will be fair and impartial. If there is reason to believe the juror won't be fair, then he won't be allowed to sit on the jury. When twelve jurors have been accepted, the trial will begin.

To open the trial the Prosecuting attorney will summarize the charges against the defendant and explain how he intends to prove them. The defense attorney will in turn state the position which his client will take during the trial.

Following the opinion statements the prosecuting attorney will call a witness who testifies that: (a) The defendant hasn't done his homework for three days. (b) the defendant had a study period each day from 2:30-3:00 p.m. and could have done the work then. (c) The defendant arrived at school by 8 a.m. each morning and could do most of the math work then instead of talking to friends. (d) He also saw the defendant playing in his yard one of the afternoons in question for at least an hour.

Following the statements of the prosecution witness the defense attorney may ask any question necessary to clarify any statements made by the witness.

In defense the defendant takes the witness stand and testifies to the following: (a) Because he is a patrol boy, he had to leave class early on the day in question and did not hear the assignment given. (b) The second day he had to help his mother after school and there were two interesting T.V. shows on after supper, leaving no time for study before bedtime. (c) Out-of-town company arrived on the third evening, and the noisy household made it impossible for him to study.

Following the defendant's statements the prosecutor will have an opportunity to question any of the remarks made by the defendant.

After all testimony has been heard, both attorneys will summarize their positions to the jury in their closing arguments.

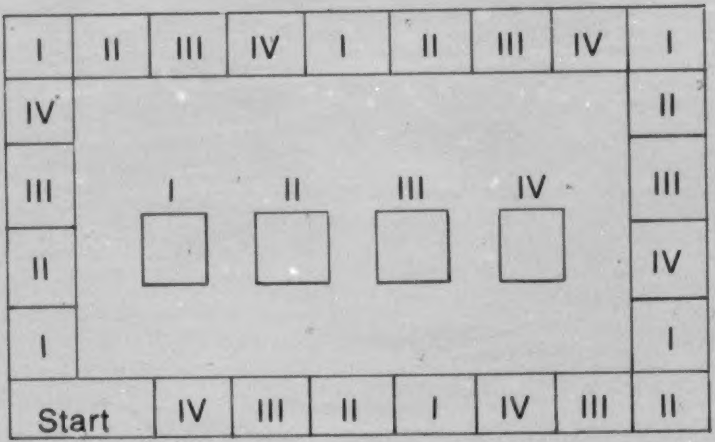
The judge will then instruct the jury that in order to find the defendant guilty they must unanimously find that the defendant did commit the crime as charged. If the jury does find the defendant guilty, they must assess punishment at the loss of from one to ten recess periods.

(See Objectives 0.1, 3.3, and 3.9.)

- 163 -

THE ALL-PURPOSE QUIZ BOARD

Make a game board out of poster board that looks similar to that below:



Students may make their own markers. Have question cards made that relate to the class's particular study of the legal system. I Questions are easiest and if answered correctly score 1 point. II Questions are harder and earn 2 points if answered correctly. IV Questions are hardest and can earn 4 points if answered correctly. Small numbers of students may play the game during free time, or the entire class may play using teams.

The board may be designed differently and may be used for any subject matter that lends itself to quiz questions.

(See Objectives 0.1, 1.1, 1.7, 2.2, 2.7, 2.8, 2.9, 2.11, 3.2, 3.5, 4.2, 4.3, 5.5, 6.1, 6.2, 6.4, 7.4, 8.4, 8.5, and 9.1.)

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DUAL CITIZENSHIP: ITS IMPLICATIONS

Begin the lesson by asking students if they know where American citizenship is defined in the Constitution or by directing students to Amendment XIV, Section 1 and asking students to explain what definition of citizenship is stated there. Your class may also do all or some of the following:

Study the circumstances under which the 14th Amendment was passed.

Identify what guarantees are given to American citizens there. Discuss what the benefits are and problems of living under two political jurisdictions (federal and state), two sets of laws, and two sets of courts (these can be drawn in chart from as a visual aid to discussion).

Does this kind of dual citizenship make it more or less likely that the guarantees of due process, equal protection, and "privileges and immunities" will be preserved for all citizens? A specific example — what might have happened to Gerald Gault in the case in re Gault if he had been a citizen only of the State of Arizona? (or only of the Federal government? An example of a state law which is stricter than a federal court decision (Goss v. Lopez) in guaranteeing due process is the Missouri law setting standards for student suspension hearings (Esteban v. Central Mo. State, 1967).

Would the Civil War have taken place if the concept of dual citizenship had not enabled the southern states to claim the primary loyalty of their citizens? How did the Civil War clarify our dual citizenship? Research the theory of state "interposition" used by Gov. Faubus at Little Rock and Governor Wallace in Alabama.

What role does the U.S. Supreme Court have in maintaining this concept of citizenship? If the Court were abolished, or lacked the powers it has developed, could dual citizenship be maintained?

Study the modern civil rights movement as an application of dual citizenship in such cases as Brown v. Topeka.

Another line to pursue is how people become American citizens. Studying the laws of naturalization is a beginning, but having a newly naturalized citizen come to the class, or visiting a Citizenship Oath Ceremony in Court brings the process to life (excellent for upper elementary).

Discuss responsibilities of citizenship which balance protections.

(See Objectives 0.1, 0.2, 0.5, 1.1, 2.2, 2.4, 2.13, 4.3, 5.2, 5.5, 5.6, 5.7, 7.5, and 9.1.)

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CIRCLES OF YOUR RESPONSIBILITIES

Ask the students to raise their hands (yes or no) in response to the following questions:

1. Do you help with household chores?

2. Do you clean up after your pets?

3. Do you go to bed at a reasonable hour?

4. Do you set aside enough time to do your homework and then stick to it?

5. Do you listen when other people speak, even if you disagree with them?

6. Do you help your friends, when they ask you to:

   a. Find a lost kitten?

   b. Help make cookies for a scout troop party everyone is going to?

   c. Answer some questions about homework?

   d. Let them borrow your arithmetic paper after you have finished doing the problems?

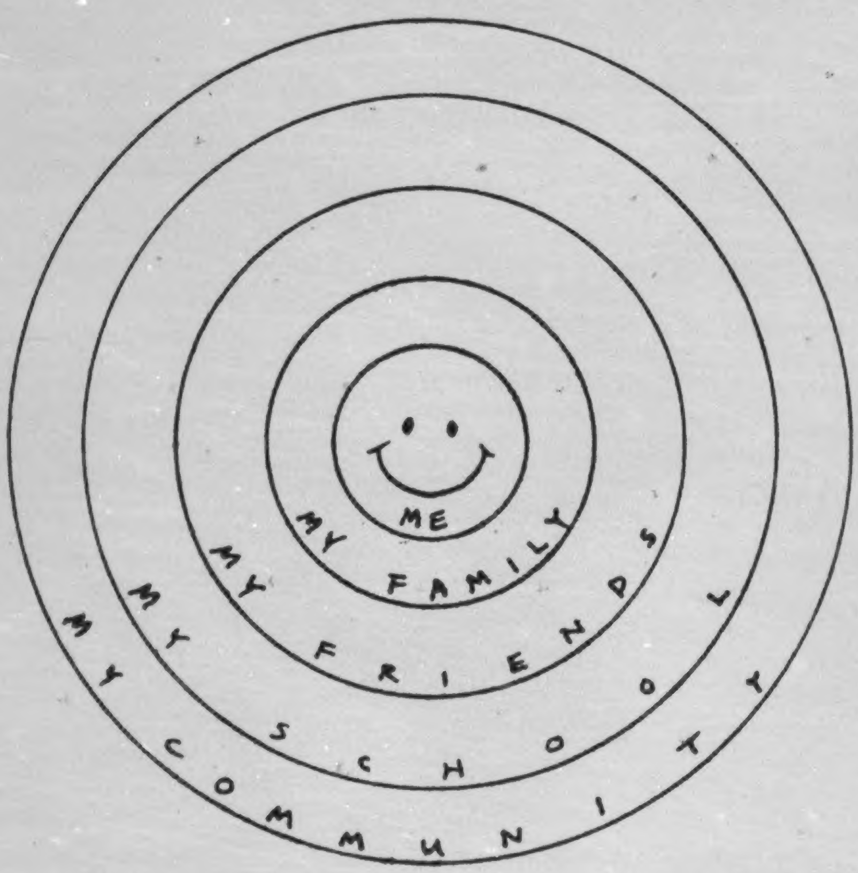
7. Do you let your little brother alone when he is upset and wants some privacy?

8. Do you pick up cans thrown along the road?

9. Do you walk to school (or ride your bike) except on very rainy days?

10. Do you obey all the school rules, even those you don't understand?

Ask the children to draw a series of circles, starting with a center one marked "me". Each circle will represent a set of responsibilities they have talked about in the poll.



(See Objectives 0.1, 0.14, and 9.3.)

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RUNAWAYS

The following set of group activities should help young people recognize the problems and issues raised by runaways and some of the community agencies that deal with them:

Investigate and report on the rights and status of a runaway juvenile under Missouri laws. What are the rights of the parents in Missouri law?

How do authorities handle runaways?

- Where are they most often picked up?
- What happens to Missouri runaways? To out-of-state runaways?
- Outline the specific steps taken by the authorities.

Investigate some of the reasons why juveniles run away.

- Interview the authorities who handle them (police, Juvenile Court).
- Interview social agencies in the community who try to help them (YES, Child and Family Service Groups, Foster or Boys Town Homes, for examples). Also interview your school guidance counselors.
- Ask yourself what conditions, if any, would make you run away.

Books for reading:

Huckleberry, For Runaways — Rev. Larry Beggs
(May be compared with Huckleberry Finn, Mark Twain)

Runaways — Ambrosino

(See Objectives 0.1, 0.2, 0.3, 0.5, 6.1, 6.2, and 6.4.)

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TIMES HAVE CHANGED

Have your students interview the oldest person they know to find out what it was like to be a juvenile in a "long ago" time.

It's a good idea to have the students think of specific questions they want to ask before going. For example:

What kind of rules did they have to live with?

What happened if they broke rules at home? A school?

How did they view the policemen they knew when they were children?

What kids were considered "bad" and what did they do to make people think of them that way?

What did they do for fun?

Did they ever know a friend (juvenile) who went to court for something? What happened to the friend?

How would they compare life for a young person then with now?

(See Objectives 0.1, 1.1, 1.7, 2.9, and 2.10.)

- 168 -

AN INQUIRY STRATEGY TO INVESTIGATE DUE PROCESS

Students will each write one question which they have concerning due process. In small groups a group secretary will write the questions on newsprint. In small group discussion, answers will evolve to some of the questions. The remaining unanswered questions are by consensus rank ordered. Then, in larger class discussions the number one question from each small group will be written on the chalkboard. All students will then use inquiry strategies to investigate those questions.

(See Objectives 0.1, 0.2, 0.5, 7.1, 7.2, 7.3, 7.4, 7.5, 7.6, 7.7, and 7.8.)

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PICTURES OF CHILDREN

You and your students could look for pictures of children interacting with each other. They could be asked to state what happened before the picture was taken and what they think will happen next. Then they could be asked questions like these, if appropriate: "Should you do what this group is doing?" "How might their problem be solved?" "Does everyone seem happy?" "Are there some rules needed?" "How are boys and girls supposed to act in the group?"

Many good pictures and problem situations may be found in Follett's new social studies series textbooks entitled *The World of Mankind*. The series was edited by Charles Quigley and Robert Ratcliffe, both of whom have been active in law-focused education programs. Other excellent pictures may be found in the book *The Family of Man*.

(See Objectives 0.1, 0.8, 0.9, 1.3, and 1.7.)

- 170 -

STUDENTS ARE RESPONSIBLE FOR SCHOOL TOO — USING SCHOOL RELATED ISSUES IN A CIVICS CURRICULUM

Students can learn about the processes of making and enforcing rules best in your school where they are given an active role in the processes. These experiences should be considered by students, parents, teachers, and administrators as important in the curriculum as math or reading. Experiences with making and enforcing rules for themselves can begin with primary students and grow in complexity and scope through the 12th grade. The activities through which such experiences can be developed may take place in any or all school groups (clubs, classrooms, grades, the whole school), and may be as broad as every issue and conflict that arises in the school as a micro-community. Teachers and administrators should use every opportunity to have students participate actively not only in rule-making and enforcing but also issue-confronting and problem-solving. For example:

1. Discuss with the students how they would solve a classroom discipline problem, and let them really try out solutions that seem reasonable to students and teacher.

2. Have them review the students handbook of school rules, suggest improvements, and then try them out.

3. Have students find out what specific problems in school the police must be called in to handle, what policies the school principal uses, and who wrote down these "rules". Are the reasons for those policies convincing to the students? To their parents? To the teachers?

4. Use specific cases — without giving Court's decision — for open-ended discussion. Examples:

Tinker v. Des Moines

Yoder v. Wisconsin

Merriken v. Cressman (Penn., 1973). Issue of Drug Education

Creel v. Brennan (Maine, 1968). Issue of student right to see recommendations in records.

5. Study current school-related issues — These could involve textbook censorship, school desegregation, investigation of cases dealing with locker searches and similar matters of interest to the students.

6. Discuss how school rules should be applied in specific cases. An example of such a guide for discussion is "Hillside School Rules", which follows:

Hillside School Rules*

This year Hillside School's Student Council established the following set of rules. The rules also received approval from the faculty and school administration.

---

*This activity was developed by Susan Davison of American Bar Association Youth Education for Citizenship.

1. No smoking by students is permitted on school grounds.

2. The playground should be kept clean and free from litter.

3. No cheating on tests and other school assignments is allowed.

4. No fighting is permitted on school grounds.

5. Coats or jackets must be worn on the playground if the temperature is under 65°.

6. No loud talking or yelling in the halls while classes are in session.

7. No snow ball throwing.

8. All children must cross streets before and after school under the direction of a member of the Safety Patrol.

What Should Happen to These Children?

1. John, a fourth grader, is caught looking directly at Marvin's paper during a math test. All of John's answers match Marvin's, even the incorrect ones.

2. Mary Beth, a sixth grader, is found smoking a cigarette in the girl's bathroom.

3. Eloise, a first grader, begins to dart across Maple Street on her way to school. The Patrol Girl, who was talking with a friend, notices Eloise just in time to grab her before a car speeds through the intersection.

4. Jay, Nina, and Carlos were having a wonderful time building a snow castle on the playground. Nina throws a snowball at Carlos. He laughs and throws one back. They continue their work on the castle.

5. Theresa was very happy. She was coming to school late because she had had a dental check up that day. And she had had no cavities! She hurried into the school building. She was loudly singing the theme song from "Zoom".

6. Matthew was noticed on the playground by a teacher. He was dropping a candy bar wrapper on the ground.

(See Objectives 0.1, 0.6, 0.7, 0.8, 0.9, 0.10, 0.11, 0.12, 0.13, 0.14, 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 2.2, 2.6, 2.11, 2.12, 3.1, 4.1, 5.1, 7.1, 7.3, 9.3, 9.4, and 9.5.)

- 171 -

ROLE PLAYING "YOU CAN'T TOUCHE ME"

The teacher can divide students into small groups to role play episodes from the pamphlet, "You Can't Touche Me," which may be obtained free of charge from the Missouri Bar.

Through a debriefing discussion ask students to identify the differences between the powers of a juvenile judge and a judge in the adult traffic court (a visit to the adult traffic court could be assigned to several students as after-school research if the class is old enough).

What are some of the special characteristics of the juvenile court and the Code?

What specific laws did Joe break during these episodes?

Why did the juvenile court judge decide to send Joe to the State Training School?

Having a lawyer present during the debriefing, or a juvenile officer, can be a great help.

If this is a history class, you could discuss why the juvenile court was developed, and the kinds of situations it must deal with today as compared with when it began.

(See Objectives 0.1, 0.2, 0.5, 6.1, 6.2, and 6.3.)

- 172 -

YOUR RIGHTS IF ARRESTED — A COMPARATIVE STUDY

Students could compare the rights of the accused in the united States with the rights of the accused in totalitarian systems.

Rights of the accused in the United States could be explored by reading Escobedo v. Illinois or Miranda v. Arizona, or by viewing *The Bill of Rights in Action: Due Process of Law*, a Britannica film. Numerous other resources could be examined.

For the rights of the accused in a totalitarian dictatorship one excellent source is Aleksandr Solzhenitsyn's *The Gulag Archipelego* (Chapter 3 of Part I, "The Interrogations"). Students could examine books dealing not only with the Soviet system, but also those dealing with Nazi Germany. The book *The Theory and Practice of Hell* by Eugen Kogon, for example, is focused on German concentration camps and describes vividly — perhaps too vividly for some readers — the Nazi system of concentration camps. Foreign language teachers may have documents related to this subject written in the foreign language, which students could translate.

Students could also compare rights of the accused of today with those of past times. A contrast with the current U.S. system could be found by examining how interrogations were carried out under the Spanish Inquisition and under the court of the Star Chamber in Great Britain. Students could also examine the rights of the accused in the U.S. West by reading Walter van Tiburn Clark's *The Ox Box Incident* and sources on the rights of blacks in the United States South during the most active days of the Ku Klux Klan.

The above are only a few suggestions of the many possible.

(See Objectives 0.1, 0.5, 0.9, 7.1, 7.3, 7.5, 8.4, 8.5, 8.6, 9.1, 9.2, and 9.7.)

- 173 -

BLIND JUSTICE AND *ALICE'S RESTAURANT*

Play the record *Alice's Restaurant* by Arlo Gurthrie. The record provides a humorous account of what happened to a group of unconventional individuals who were arrested for dumping garbage some place where it was illegal.

Have students describe what happened in the record using narrative account, a timeline, a strip cartoon, or role play. Once students understand what happened, ask them if they feel courts really work that way? Press them to specify their specific questions, get them on paper, discuss how to research those questions, and proceed to conduct inquiry into them.

(See Objectives 0.1, 0.5, 1.3, 3.2, and 3.3.)

- 174 -

GETTING CREDIT IS NOT ALWAYS EASY

This lesson may help children learn that if credit is denied to a person, that person is entitled to know why and that the reason should come either from the agency giving out the report or from the merchant, according to the Fair Credit Practice Act.

Read story below. It concerns a person who tried to get credit and was not able to do so.

> Mr. and Mrs. Marshall were very excited about moving into their new home. Mrs. Marshall quickly realized that since their new home was bigger than their older home that a few household items were needed.
>
> Mr. Marshall tried to persuade his wife not to apply for a charge account at Sears. However, Mrs. Marshall insisted. Since she had an excellent job as a school teacher, why not? As soon as the stores opened that following Monday, Mrs. Marshall went up to the credit office and applied for a charge account. To Mrs. Marshall's dismay, she received a letter the following week telling her that they were very sorry but that her application had been rejected.
>
> So that her husband couldn't say "I told you so," Mrs. Marshall decided not to tell her husband and to contact Sears herself to see why they refused her a credit card. She called Sears and was informed that she would have to call the Universal Credit Bureau. This she did. Their answer to her was that she would have to come in because information was not given out over the phone. The next day Mrs. Marshall went to the Universal Credit Bureau. She was allowed to see her credit report. She saw things there that happened years ago. Long before, she finished college and had begun helping her husband earn money. She had to admit that according to the record it looked pretty BAD.

Discussion should follow —

1. Why did Sears refuse her credit?
2. Do you feel that they were justified?
3. Since Mrs. Marshall and her husband now have more money, shouldn't the stores let her have credit?
4. Should a credit record be given out to a store?
5. Is there anything Mrs. Marshall could do to improve her credit rating?

(See Objectives 0.1, 0.2, 0.3, 0.4, 0.5, 0.6, 0.8, 1.3, 1.5, 1.6, 1.7, 2.11, 3.11, and 9.3.)

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FISHBOWL — HISTORIC MILESTONES

Historic milestones in the development of due process, such as Magna Carta and others, would be assigned to small groups for investigation. Reporting would be done by fishbowl — the reporting group in the center, the other students in a circle around the reporting group (See Activity 191 below). When all small groups have been in the reporting center, students might like to evaluate what they have learned from the various center groups. (If they know about this phase of the lesson in advance, they are more alert in order to critique)

(See Objectives 0.1, 0.5, 0.8, 0.9, 7.1, 7.4, and 7.5.)

- 176 -

ASSUMING RESPONSIBILITY CAN BE FUN — THE SUGAR PLUM TREE ACTIVITY

The activity quoted below was carried out by a Missouri kindergarten teacher.

"After discussion of school behavior that is important to each of us in Kindergarten, we decided how we thought we could demonstrate this in our daily actions in the classroom. After hearing Eugene Field's 'Sugar Plum Tree,' it was decided if we had a real sugar plum tree in the room, we might be reminded to demonstrate our good behavior. This was done by the children in the room, including all kinds of 'goodies' hanging from the boughs. When a good deed was done and recognized by a member of the group as helpful or when an extra effort was made to enhance the behavior and interest of the room, that person would be allowed to 'shake' the Sugar Plum Tree. The daily actions of the group and the daily decisions of the group determined the terms on which a reward was given. The children assumed this responsibility with great thought and enthusiasm."

(See Objectives 0.1, and 0.14.)

- 177 -

JURISDICTION: WHAT IS IT AND WHO HAS IT?

Define "jurisdiction."

1. Place on the chalkboard examples of some of the cases that are brought to trial in federal courts. Examples: Lawsuits between citizens of different states, persons accused of breaking laws passed by Congress, crimes committed on American ships at sea, etc.

2. A student has a baby sitter or relative in the home. Does the student have to obey the rules of persons other than the parents?

3. Place on the chalkboard examples of some cases that are brought to trial in state courts. (Municipal, magistrate, circuit, court of appeals, etc.) Have the students discuss who has jurisdiction over them. Then discuss what would happen if court jurisdiction over cases was not clearly defined.

(See Objectives 0.1, 4.1, 4.2, and 4.3.)

- 178 -

EQUALITY DENIED

Without warning or explanation, tell all children who have on striped clothes (or plaid) that they may not participate in the science activities that day. Isolate the group, and give it books to read.

When there is enough dissent, ask the children what they can do about the teacher's discrimination? What could they do if they were adults?

Investigate school segregation and the Supreme Court's decision on integration.

(See Objectives 0.1, 0.5, 0.8, 0.9, 2.11, 5.5, and 9.1.)

- 179 -

"YOU'VE COME A LONG WAY, BABY"

1. Secure from City Hall copies of the city ordinances from the past (100 years ago, perhaps). Note particularly land use, etc.

2. Secure copies of the traffic laws from the past. Note particularly laws governing traffic flows at intersections.

3. Contrast these with ordinances and traffic laws passed within the last 5 years.

4. Discuss a list of rules for teachers 50 years ago.

5. Interview elderly people to get their ideas of how laws have changed over the course of their lives.

6. Investigate current ordinances in such areas as zoning, waste disposal, licensing of restaurants, etc. Students may interview city government officials who are involved in the enforcement and implementation of the ordinances.

7. Discuss these questions: What laws of today would seem most strange to someone who lived 50, 75 or, 100 years ago? What laws of today would seem most strange to someone who visits or lives here 50, 75, or 100 years from now? Students could write short stories about life in the past or future.

(See Objectives 0.1, 2.9, and 2.10.)

- 180 -

IGNORANCE OF THE LAW — ITS CONSEQUENCES

The teacher introduces the idea that the legal system depends upon a well-informed citizenry. A person is accountable for the consequences of his or her own actions, and ignorance of the law is not an excusable reason for breaking the law and could result in punishment:

Activities:

1. Divide students into discussion groups.

2. Have students in their groups investigate what laws are often violated in their locality, sometimes, at least, as a result of ignorance. They could contact a municipal judge, city policeman, or any person connected with the city government's administration (public health, planning and zoning, park department, etc.).

3. Discuss:
   a. Were the students aware of the often violated laws?

   b. What are their attitudes towards those laws?

   c. Do they feel those laws are fair? If not, how might they be changed? Who could they appeal to?

4. Hand out and discuss Missouri Bar Pamphlets "You Can't Touch Me", "Your Rights in Traffice Court" and "Your Rights If Arrested".

(See Objectives 0.1, 0.2, 0.3, 0.4, 0.5, 0.6, 1.1, 1.3, 1.4, 1.6, 1.7, 2.11, and 9.3.)

- 181 -

EQUALITY AND JUSTICE IN THE UNITED STATES

Show the films *Color of justice* and *Bill of Rights in Action: Due Process of Law*.

Have students analyze some aspects of justice within contemporary American society (individual rights versus the rights of society). Have students study the area of discrimination in the administration of the law. Committees may deal with the discrimination based on race, sex, or age. They should consider when is it fair to give some people more rights or privileges than others (based on age, for example).

(See Objectives 0.1, 0.2, 0.3, 0.4, 0.5, 0.6, 0.7, 0.9, 0.10, 0.11, 0.12, 1.2, 1.3, 1.4, 1.6, 1.7, 2.11, 6.1, 6.2, and 9.1.)

- 182 -

ANIMALS AND THE LAW

Ask the students to bring in pictures and articles from magazines about animals and make a bulletin board of this material to use as a basis for discussion.

To get printed material related to proper treatment of animals, the class may write these groups: Animal Humane Association (Box 1266, Denver, Colo. 80201) and Humane Society of the United States (2100 L Street, N.W., Washington, D.C. 20037). They may also contact the local humane society or the local city hall.

The class may invite to class an official from the city's animal control unit or from the local humane society. Students could discuss with these people what kinds of local ordinances exist to protect animals or protect people from animals that may be dangerous. Many legal questions could be discussed, such as:

- What responsibilities do pet owners have to their pets and to their neighborhood?
- Why are laws related to animals needed?
- What sorts of penalties exist when people violate ordinances related to the care of animals?
- How well are laws related to animals enforced?
- What courts have jurisdiction over cases related to violations of ordinances pertaining to animals?
- How adequately have local laws provided for the proper care and treatment of animals?

- How does an owner gain title to a pet? How may he lose title?

- Are there controversies related to laws for pets, such as whether to have a leash law, whether lions may be used to protect private property, etc.?

(See Objectives 0.1, 0.2, 0.5, 0.6, 0.10, 0.14, 1.1, 1.3, 1.4, 1.6, 1.7, 2.11, 9.3, 9.4, and 9.5.)

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"SPLIN AKTVETI"

Directions like the following should be written on the board before class begins:

1. Reed tha stori "Enuf for Everiwun" on paj fifti-wun.
2. Ansur kwestunz wun thru twente on paj sixte to.
3. Mak a kroswurd puzl for tha vokabulari wurdz.

As soon as the class sees these weird directions on the board they will begin to question you about them. The teacher can then ask the class why they think she might have done this. The point to bring out here is that if everyone spelled words according to his own set of rules, we would soon become very slow readers because we would be constantly translating each printed page.

Ask what might happen in our day to day living if everyone followed his own spelling system. The following are some of the answers you might get: news commentators stumbling through the evening news, families puzzling over the newspaper, mother misreading directions for a recipe, and so forth. Encourage other answers. Guide the discussion around to the idea that a uniform spelling system is certainly helpful, if not completely necessary for rapid communication among people.

Next, ask students what would happen in their home town if there were no laws governing us. This should start some wild speculation. Students should see that in the long run this would be a chaotic situation. Point out that laws are set up to help groups of people live together.

(See Objectives 0.1, 1.3, and 1.6.)

- 184 -

SIMULATION: A CONFERENCE ON REDUCING CRIME

The simulation described below is effective for generating discussion, building speaking and reasoning skills, helping students to understand a specific position, and allowing them to develop a consensus based on compromise. The activity can be completed within one class period, or be extended over several periods. The students will probably need time to research the question and their positions.

Conference on Keeping Order

All members of the class should participate in this activity. The activity shows how hard it is to get agreement on the meaning of the term "law and order." The goal is to encourage discussion and try to get student-participants to work out a compromise acceptable to at least the majority.

Steps:

Divide the class into the following role-groups:

- Policemen from several large cities
- Mayors representing major cities
- Middle class taxpayers
- Group of young blacks from low income neighborhoods.
- Reporters
- College students
- Businessmen from rural (or suburban communities)

The Conference Question:

As a way of holding down the rising crime rate, should the police forces of the U.S. be strengthened by increasing police manpower, weapons, control devices, eliminating legal restrictions on police power (e.g. Miranda rights), and making the penalties for assaulting a policeman more severe? Remember — this will cost most tax money.

Planning Session — (15 minutes minimum for each role group to prepare its position; students may actually need to spend several days reading news magazines and interviewing appropriate people to gain an understanding of the roles they have, to play those roles realistically.)

Each role group prepares a brief position statement on the conference question and selects a spokesman.

Conference Session — (25 minutes, including final vote on question)

Each group person expresses his groups' position. The Conference Chairman selects persons who wish to make a point during the conference. Points must reflect role of speaker's group. However, compromise positions may be put forward to obtain a consensus.

Evaluation: (10 minutes)

What happened at the conference? How do you feel about the conference question? Did every group have a fair chance to express its views and influence the final decision? Is the final decision workable? Was it easy to reach a decision? Explain.

(See Objectives 0.1, 0.4, 0.5, 1.4, 1.5, 8.4, 8.5, 8.7, 8.8, 8.10, 9.1, and 9.4.)

- 185 -

DECISION MAKING SIMULATION: THE PAROLE BOARD

Read "The Parole Board's Problem," printed below:

The Parole Board's Problem

You are on the parole board in your state. There has been a great rise in the crime rate, and as a result a large number of criminals have been convicted and sentenced, many to long terms. The prison is already overcrowded, and you must make selections on whom to parole to make room for the most recent crop of criminals. You are to pick eight of the inmates on this list:

1. A bookseller, convicted of selling pornographic material.
2. An arsonist convicted for setting four fires to public buildings, now "cured" after serving eight months of a three year sentence.
3. A banker convicted of embezzling a million dollars from a big city bank.
4. An ex-college student and heroin addict serving time for pushing hard drugs to juveniles.
5. Civil rights lawyer convicted for contempt of court.
6. An AWOL Vietnam serviceman who, upon returning home, was convicted of desertion.
7. A black militant member of MauMau convicted of conspiracy.
8. A "Godfather" convicted for tax evasion.
9. Newspaper reporter convicted of refusing to identify his news sources in a delicate case involving three members of President's cabinet.
10. A doctor convicted of criminal malpractice.
11. Female liberationist who strongly believes in freedom of expression who removed her clothes in public.

12. A father who refused to send his children to school because of the religious-type celebrations held in school.

Have students divide into groups of 5. Each group will act as a parole board to decide on which 8 of these 12 will be parolled. The decisions of each board must be unanimous. If they cannot agree on 8, only those receiving unanimous approval will receive paroles.

After a period for discussion and decision-making, each group will report on which ones they granted parole to, and what their reasons were for selecting those. They can also be asked to tell why they did not agree to give parole to others on the list.

Out of the reports and the discussion, let the class try to work out guidelines for a parole board. Then compare those with the official guidelines which presently regulate decisions of Missouri boards.

Inviting an official from the Division of Probation and Parole to listen to the students' reasoning and discussion and to assist with the debriefing will help the class to understand the complex questions dealt with by a real parole board.

(See Objectives 0.1, 0.2, 0.3, 0.4, 0.6, 0.7, 0.8, 0.9, 0.11, 0.12, 3.2, 8.11, and 9.4.)

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SCHOOL RULES: SOVIET VS. AMERICAN

Using the booklet *The Soviet Union*, (Xerox educational publication), students will compare the list of rules which Russian students must memorize and obey with their own school rules. An excellent source dealing with rules and discipline in Soviet schools is *Soviet Education* by Nigel Grant (Pelican Book A660), Chapter 3. Explore with them the consequences which may occur if (a) the Russian and (b) their own rules are not obeyed. Ask whether the United States as a nation has a list of school rules like the Soviet list? Consider also what basic national beliefs and values have influenced the differences in these two systems of rules?

The above lesson lends itself very much to a course in European history or a unit in Soviet history and government.

(See Objectives 0.1, 0.5, 1.1, 2.2, 2.3, 2.4, and 9.7.)

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JOBS AND POLYGRAPHS

In the box on the next page is an agreement both parts of which must be signed before one may become an employee at a particular store.

1. Would you sign the agreement?

*Name*____________

Polygraph Agreement

It is fully understood and agreed that as a condition of my employment with XYZ Company, I will submit to a polygraph (lie detector) examination should I be selected either on a departmental random basis, or at any time requested by the company in connection with a specific incident.

It is further understood and agreed that XYX Company, reserves the right to determine the continuation or termination of my employment in the light of the results of said polygraph examination.

I hereby authorize XYZ Company and/or Liberty Mutual Bonding Division to conduct an investigation to prove my insurability — a security clearance investigation.

My signature below indicates my awareness that such a security investigation might be conducted and further indicates my agreement to the terms above.

DATE________ SIGNATURE___________

2. A polygraph test is a "lie-detector test." Why should that be a part of the agreements you must sign to work in this store?

3. Is the requirement to take this test a fair condition of employment or not? Is a polygraph test like any other test to see if one is competent for the job to which he is applying (i.e., is it like a civil service exam?)

4. Is taking the test or having an investigation of your insurability an invasion of your right to privacy?

5. What channels could you use to appeal a termination of employment on the basis of the polygraph test?

What information about polygraph tests do you need before answering these questions? How will you obtain the information? Consider both people to interview and library research using *The Reader's Guide to Periodical Literature.*

(See Objectives 0.1, 0.2, 0.3, 0.4, 0.5, 0.6, 0.9, 0.10, 0.11, 0.12, 1.4, 8.6, 9.4, 9.5.)

WHAT RIGHTS HAVE A WITNESS?

The case in the box below could be used to discuss what due process means and how the courts apply its protections on a case by case basis.

Write on the board or explain to students that a Tennessee law provides for the confinement in jail of material witnesses when, in the judgment of the prosecutor, it is necessary for protection of the witness or for proof in a felony case. Discuss the pros and cons of the law and the reasons why legislators would vote for it. Then read the first three paragraphs of the case below. Discuss whether students feel the Tennessee law was:

1. correctly used by the police

2. constitutional

Role playing the incidents may be used to dramatize what happened and why the police and the Memphis Criminal Court acted as they did. Discuss what recourse Stephens and his attorneys had, and their use of precedent, to appeal his case. Students may be interested in finding out what prosecutors in their city, county, or municipality do to protect material witnesses. What are Missouri laws and court decisions in this area?

Other issues: Can a material witness change his mind about giving testimony in open court? Be forced to testify by the Court? What might happen if a prosecutor builds his case on the testimony of just one witness and that person then refuses to take the stand?

How are material witnesses for the State's case handled in an inquisitorial system of justice (as in totalitarian countries)?

Trial-Rights of the Material Witness

Only a few months ago, hardly anyone much cared how Charles Quitman Stephens, 57, chose to lead his life. An unemployed bulldozer operator, Stephens drew a modest veteran's pension from the Government, lived alone in a room rented for $10 a week in downtown Memphis, and had a reputation for drinking. Stephens would have continued to attract small notice had he not been present in his rooming house on the afternoon that Martin Luther King, Jr., was shot to death while standing on a motel balcony a few hundred feet away.

According to police, the sniper fired from a window perch in the rooming house. Stephens told authorities that seconds after the shots rang out he had seen a stranger hurrying down the stairs from the second floor, carrying a package that presumably concealed the murder weapon. Days later, he identified the man from photos as James Earl Ray, who eventually was seized in England and charged with King's murder.

Thus, from an inconsequential human cipher, Stephens leaped to importance as a central witness in one of the century's most shocking assassinations. He was so important that the state sought to do everything -- even keeping him a prisoner

-- to protect him against harm from possible accomplices in the killing. At first, Stephens willingly moved into Shelby County Jail, where he was free to come and go, accompanied by a body guard. Police, however, felt he was away too often, claiming that his activities outside the jail jeopardized his own safety. As a result, the state invoked a Tennessee law that provides for confinement of material witnesses. Stephens was imprisoned in July. In setting bail of $10,000, the Memphis Criminal Court virtually assured that Stephens would be safely tucked away until Ray's scheduled trial in November.

Stephens was understandably irritated over this treatment, especially when police refused to give his own brother permission to see him. His irritation raised a little-understood legal issue: What are the rights of a material witness? He got in touch with a pair of Memphis attorneys, Harvey Gibson, 37, and Jay Fred Friedman, 33, who pored over the laws of Tennessee and other states for precedents. While most states permit the jailing of witnesses, the attorneys found that the laws have been applied only in extreme circumstances, when there is clearly no other way to guarantee a witness's appearance in court. New York courts, for example, have upheld the imprisonment before trial of rackets witnesses who might flee the country or be bribed or intimidated into changing their testimony.

Tennessee's law had been tested in the courts only once, but in that case the jailing of a witness had been upheld because he had balked at testifying and had been declared in contempt of court. By contrast, Stephens had been a cooperative witness. His lawyers argued that there was no reason to believe that he would not testify; there had been no actual threats on his life. Taking the case to a Memphis Circuit Court, Gibson and Friedman won a plea for a writ of habeas corpus on the grounds that Stephens had been denied due process and that his bail was excessive.

(See Objectives 0.1, 0.2, 0.3, 0.4, 0.5, 0.6, 0.8, 0.9, 1.3, 3.2, 7.3, 7.6, 7.7, 8.5, 8.6, 9.1, 9.4, and 9.5.)

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ACTIVITIES RELATED TO THE RIGHT TO VOTE

1. Have students investigate the history of the right to vote in the United States. They could develop their own questions to guide their inquiry or use these as a starter:

-What people had the right to vote during colonial days?

-Who had the right to vote according to the U.S. Constitution?

-Who gained the right to vote between the writing of the U.S. Constitution and the Civil War?

-What is the meaning of Amendment XV?

-What tactics were used to keep Black Americans from voting from Reconstruction days to the 1960's.

-What is the meaning of Amendment XIX?

-What laws were passed during the 1960's that assured Black Americans of their right to vote?

-What have laws had to do with the matter of who may vote?

-Does it matter whether a citizen actually has the right to vote? Give reasons.

2. Have students study an election, including the platforms of the candidates. Better yet, carry out a mock election. In the process, be certain to have students investigate laws related to voting, including a study of how to mark ballots validly. Voting officials may be contacted as resource people. When discussing laws related to voting (see Activity 106), encourage students to speculate on what they think would be the purpose of such laws.

3. The class could compare voting procedures of their locality with those of another country. This activity can be done by consulting reference books or by interviewing people in their community that came from other nations.

4. The class could identify possible difference of opinion and conflicts that arise related to voting. It could explore how such conflicts are resolved. For example, how would a dispute between two candidates be handled if one candidate claims some votes of his opponent are invalid? What role do lawyers and the courts play in such disputes?

5. The class could debate the question: Resolved: That all citizens should be required by law to vote for candidates for public office.

(See Objectives 0.1, 0.2, 0.3, 0.4, 0.5, 0.6, 0.8, 0.9, 0.10, 0.11, 0.12, 0.14, 1.1, 1.3, 1.4, 1.6, 1.7, 2.3, 2.4, 2.6, 2.9, 2.11, 2.12, 9.1, and 9.3.)

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TRAFFIC SITUATION ANALYSIS

This project begins in the classroom and may last as long as four weeks. It could include collecting statistical information, a day in traffic court, and interviews of law enforcement officers and the prosecuting attorney. The project may be finalized by a brief report.

Begin with analyzing pictures and drawings of traffic situations which would be useful in helping students develop perceptual, predictive, and decision-making capabilities. Since driving is basically a process of making numerous fast decisions which are dependent on visual perceptions and judgments, adequate visual training is a necessity. Perceptual information can take any form: numbers, letters, words, traffic signs, or traffic situations. Most people will be able to pick out three or four pieces of information without visual training. This is the level where training to increase visual perceptions should begin. The class works independently, views the situation with a problem solving attitude, looking for cues that require the driver to adjust his speed or position.

Traffic situation analysis tends to stimulate interest, discussion, and further study. In addition to improving the ability to identify, predict, and select appropriate courses of action, many opportunities arise for teaching traffic laws and other segments of content in a meaningful setting.

Try to capitalize on the initial interest created by the situation using it as a means of developing or discovering important generalizations. One of the most important objectives in driver and safety education is to develop the ability to sense a hazardous situation. Possibilities for increasing this ability exist in having students analyze case studies. These cases should involve drivers whose ages match those of the students, so that they can identify with the characters in the situation.

To prevent the project from becoming an end in itself -- where the student learns only to build a model, construct a chart, or conduct a survey -- try to encourage the students to focus attention on the implications of the project and its underlying data for improving driver behavior in adherence to the law.

(See Objectives 0.1, 0.5, 0.14, 1.1, 1.3, 1.7, and 9.3.)

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STRATEGIES FOR DISCUSSING LEGAL CASES

Suppose you give a case like the following to your class:

Paul stole a valuable camera from William, following which Paul sold the camera to John. Paul then disappeared. William, upon seeing John with his camera, claimed the camera was his, whereas John claimed the camera was his since he payed for it.

--What was the nature of the dispute between William and John?
--Did either William or John engage in anti-social or dishonest behavior?
--How should this dispute be resolved?
--What elements are essential to the resolution of the dispute?

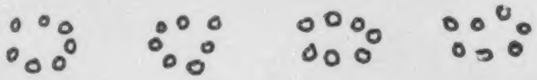
How would you have class discuss the case? Several ways are possible, a few of which follow:

1. Students could first think independently about the problem by writing their answers to the third question before any discussion begins. Then, in a class discussion, the teacher could draw from the class a variety of answers listing key features of different solutions on the board.

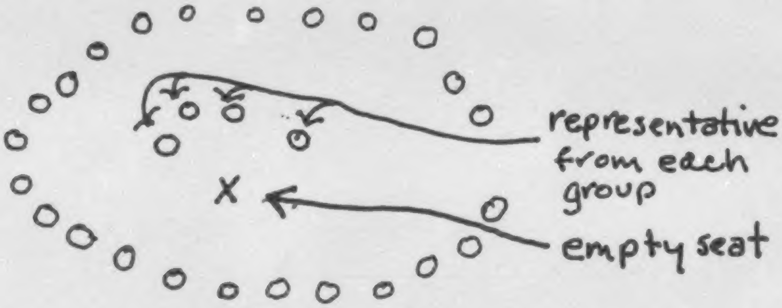
2. The teacher could divide the class into small groups, half of which would marshal reasons to support William's side and half of which would marshal reasons to support John's side. After ten minutes, the teacher would have groups take the opposite position. The purpose of such a discussion is to help students understand that each side can marshal good reasons to support it. Following this method of discussion, the teacher could lead the entire class in a discussion of how such a dispute could be resolved and also prevented.

3. The teacher could use a "fishbowl strategy." First, the teacher breaks the class into

four groups as shown below:



Each group would spend ten or more minutes discussing the above questions. Next, the teacher would have one representative from each group sit in the middle in the following manner:



The students in the fishbowl would then discuss the questions in front of all other students. Anyone who wishes to participate in the discussion may temporarily enter the vacant seat and join in the conversation.

(See Objectives 0.1, 0.3, 0.4, 0.5, 0.6, 0.7, 0.10, 0.11, 0.12, 1.1, 1.3, 1.4, 1.5, 1.6, 1.7, 9.4, and 9.5.)

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REMOVING A HAZARDOUS CONDITION

The following activity was described by a teacher from Springfield, Missouri:

"I thought you would be interested in the results of an activity carried out last year by our sixth grade at Tefft School. They took the initiative in an activity which brought about the change of a traffic sign.

"Tefft School is located at the intersection of Fremont and Pythian. For years the traffic on Pythian had the right of way, and the traffic on Fremont had a stop sign. Southbound drivers on Fremont found their view obstructed by the existence of some large posts, and they often pulled into Pythian only to find the street not clear of oncoming cars. After a number of car accidents at the intersection during the early part of the 1974-75 school year, some sixth grade students expressed their alarm at the hazard to drivers and to pedestrians that existed at the intersection. Under the guidance of their teacher, a letter was composed and mailed to the Springfield Police Department. The letter was signed not only by the sixth grade but by all the students and teachers at Tefft who wished to do so.

"The Police Department informed the sixth grade that their letter had been forwarded to the traffic division at City Hall. The sixth grade directed a later communication to City Hall. As a result of their efforts a study was made of the traffic at the intersection, and the class was paid a visit by the Director of Security and Safety of the Springfield Public Schools. After the study had been completed, information was received to the effect that the old signs would be replaced by new four-way stop signs. This replacement has taken place and it is our hope that the change will reduce the number of accidents and make the intersection safer for both pedestrians and motorists.

"It is the opinion of the teachers involved that the activity contributed enormously to the self-esteem of the students and to the feeling that what they think and do does count."

(See Objectives 0.1, 0.2, 0.4, 0.6, 0.10, 0.11, 0.13, 0.14, 1.1, 1.3, 1.4, 1.5, 1.7, 2.2, and 2.11.)

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ANNOYANCE CALLS

The class could discuss annoyance calls, the risks involved, and whether it is unlawful to make calls with an intent to annoy, abuse, threaten, or harass any person or persons. They could role play consequences of such calls. Hopefully, this lesson will develop a measure of respect for the rights of others and make students cognizant of the unfortunate consequences that result from making annoyance calls.

Since Missouri laws prohibit the placing of annoyance calls, a resource person from the telephone company, a school principal, juvenile officer, or police officer may visit the class to explain the seriousness of such calls.

The class may make a study of ways to assist students in recognizing possible consequences resulting from annoyance calls through Scouts, 4-H clubs, church activities, or other extra curricular and community projects. Students may construct activities which lead to development of good citizenship and pride in what they have accomplished. They should also, during the course of this activity, read about the case *In re Gault*.

(See Objectives 0.1, 0.2, 0.3, 0.5, 0.6, 0.11, 0.12, 0.13, 0.14, 1.1, 1.3, 1.5, 2.11, 5.5 for the Gault case, 9.1, 9.3, 9.4, and 9.6.)

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WHEN SHOULD A CONTRACT BE DECLARED VOID?

Legal contracts among adults are enforced by the courts. Sometimes, children make contracts in the form of oral agreements. When should such contracts be carried out? When should they be held void? To explain such matters you could use real situations as they occur or you could make up a situation like the one that follows:

Roger promised to trade Jim three baseball cards for Jim's new baseball glove. Roger gave Jim the cards on the promise Jim would give him the glove tomorrow.

When Jim's parents heard about Jim's promise, they said he should not make the trade. (The cards cost 5¢ and the baseball glove cost $10.) Jim decided he wanted to keep his glove, but he knew he made a promise to Roger.

Should Jim have to give Roger the glove?

The students could act out what Jim should do and how Roger will react, or they could discuss the matter in small "buzz groups." There are numerous other possibilities.

(See Objectives 0.1, 0.4, 0.8, 0.9, 0.10, 0.12, 1.1, 1.2, 1.3, 1.4, 1.5, 1.6, 1.7, 2.4 - See Constitution, Article I, section 10, paragraph 1 - 6.1, 6.2, 9.3, 9.4, and 9.5.)

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THE DRED SCOTT CASE

Since the Dred Scott case took place in Missouri, have students research the case to discover how and why the case reached the Supreme Court. Using the film *Justice and the Law*, show only the part dealing with the Dred Scott case. Discuss the implications and ramifications with questions such as: Why did the Supreme Court rule as it did? What were the consequences of the decision for Blacks? For other Americans?

Students should learn terminology of a court case (i.e., "appeal," "verdict," "decision," "opinion," etc.), learn about court structure in this activity, and learn that the Supreme Court acts as the final interpreter of the Constitution.

Facts and actual conclusions from the case may be used to discuss the Bill of Rights and deal with the question: Is the law the same thing as justice? (Actually, law may better be seen as a tool that *may be used to* achieve justice. Students could consider whether in the case of Dred Scott the law was interpreted in a manner that would promote justice. Such a question could serve as an excellent topic for debate.)

(See Objectives 0.1, 0.5, 0.6, 0.7, 0.8, 0.11, 1.4, 1.7, 2.2, 3.2, 3.3, 4.5, 5.5, 5.8, and 9.4.)

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STUDY OF BUILDING CODES

This unit may be used in an architectural drawing class to show the influence of building codes on present day residential construction and that these codes are designed for the benefit of all concerned. In order to identify reasons for having building codes, have students read and discuss local building codes, discuss their purposes, and list reasons why building codes are important for citizens.

In what ways would you or others be affected if there were no building ordinances? This question should elicit possible problems arising if there were none.

(See Objectives 0.1, 0.3, 0.5, 1.1, 1.3, 1.6, and 1.7.)

MR. PETERSON'S DILEMMA

In the box below is a hypothetical situation your students could read and discuss:

> Mr. Peterson teaches social studies in the local high school. Because of his great rapport with his students, he is known as one of the best teachers in the school. One day after a class discussion of contemporary problems in America, several class members approached Mr. Peterson in his office to tell him that they planned to boycott the school cafeteria in support of the migrant farm workers across the country. Previously, the students had picketed the local grocery store and passed out leaflets in their neighborhood. They had also circulated a petition and written letters to the school authorities in an attempt to stop the school from purchasing non-union lettuce and grapes. Both of these attempts to change school policy had failed.
>
> The students indicated that they not only planned to boycott the cafeteria, but hoped to shut it down by setting up a picket line during the lunch hours. The students told Mr. Peterson about the planned boycott because of the many class discussions in which they had talked about the American tradition of protest. They also insisted that the success of the boycott depended on Mr. Peterson not breaking their confidences. They did not want the school administration to know about the plan.
>
> Mr. Peterson feels sure that other teachers and the administration do not know about the planned boycott. He also knows that part of the student body would not be sympathetic to the boycott and a physical confrontation could result. According to a school rule, any organized student gathering on the school grounds must be cleared by school officials. Mr. Peterson also knows that faculty members are supposed to notify the school administration of any activity which may interfere with the school schedule and regular activities. Mr. Peterson discussed the various implications of the boycott with the students. The students understand these, however, and are still determined to go through with the plan.
>
> Should Mr. Peterson tell the school administration of the impending boycott and picket line?

Follow-up questions:

1. What are Mr. Peterson's rights and responsibilities in this situation? Are his rights and responsibilities clearly defined by Missouri law?

2. Do the students have a legal right to do each of the actions described: picket the local grocery store, hand out leaflets, petition and write letters to school authorities, and boycott and picket the school cafeteria? (If your class does not know how to answer these questions, you may wish to have the students utilize a lawyer as a resource person.)

3. For each of the actions taken, what do you think the school authorities could legally do? What do you think the school authorities *should* do?

Preparing for the lesson:

You would develop a set of lesson plans, or a series of activities using "Mr. Peterson's Dilemma" for a 7th or 8th grade class. In such a case, you would identify what legal concepts you want the students to understand from the activities you plan. This material could be used to help students see the need for balancing rights and responsibilities and for restraint by both teachers and students. Using small groups the students could decide what Mr. Peterson should do and also what the students and administrators should do. You and students might develop stories like the one above for discussion purposes. The writing of such stories could be an English class writing exercise.

(See Objectives 0.1, 0.4, 0.5, 0.6, 0.7, 0.10, 0.12, 1.1, 1.3, 1.4, 1.5, 1.6, 1.7, 2.2, 2.11, 5.5 for Supreme Court cases dealing with students rights in school, 6.2, 9.1, 9.3, 9.4, 9.5, and 9.6.)

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AN OCTOBER SAFETY LESSON FOR HALLOWEEN

Write to UNICEF for information on a safe and constructive Halloween program. Secure from AAA: *Manual on Pedestrian Safety, The Young Pedestrian, School Pedestrian Safety Program and* also these films: *The Little White Line that Cried, Two Sleeping Lions* and *Inky and Blinky.*

Plan a debate on the topic "Pedestrians are more careless than Drivers." Dramatize "Do's" and "Don'ts" for holiday safety. Divide acting area in half -- the "Do's" on one side and "Don'ts" on the other. Groups alternate when presenting their dramatizations.

Discuss which times are most hazardous for pedestrians. Poor visibility, heavy traffic, and tired drivers spell potential danger for pedestrians. Discuss specific safety hints for Halloween: Masks that do not obstruct one's vision, light colored costumes, flameproof costumes, luminescent paint or reflectors on costumes, short costumes to prevent tripping, and costumes that protect against cold or other weather conditions.

(See Objectives 0.1, 0.5, 0.6, 0.14, 1.1, 1.3, 1.6, and 9.3.)

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ABOLISHING PRAYER IN SCHOOL

Review the 1963 Supreme Court decision that ruled that any religious exercise in school violates the Constitution. Trace the effects of those decisions to the present and discuss proposed amendments which in one way or another would restore prayer to public schools. Consider also the question of whether the opinion forbade the teaching of comparative religion or study of religious literature in school.

Investigate the relationship of religion to social life, government, and education in Puritan America. Also, have groups report on the separation of church and state in the early history of the United States and on the separation of church and state in the United States today. Have students write a brief synopses on the evolution of the separation of church and state and write their opinions in regard to whether the 1963 decisions support individual rights or infringe upon them by denying prayer in school.

The Harvard Social Studies Project booklet *Religous Freedom* (Xerox) is a good resource to engage students in discussion of legal and moral issues related to the application of the religious freedom clauses of Amendment I. The booklet deals with the 1963 prayer decisions referred to above.

(See Objectives 0.1, 0.2, 0.3, 0.4, 0.5, 0.6, 0.7, 5.5, 9.1, 9.4, and 9.5.)

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SHOPLIFTING -- HOW SERIOUS A PROBLEM?

Prepare a hypothetical case of a local school boy who was caught walking out of a clothing store with a new pair of trousers under his regular clothing and no sales slip.

Discuss causes and effects of shoplifting and attitudes toward various levels of enforcement: enforcing the law, not enforcing the law, or selectively enforcing the law. Groups may present reasons for each level of enforcement.

Bring out means of prevention and possible precautions by listing six of each.

Discuss arrest procedures by local police and rights if arrested. The booklet from the Missouri Bar, *Your Rights If Arrested*, may be useful.

Make a survey of local merchants on crime alert procedures and amounts of losses due to shoplifting. Consider who pays for the losses and the cost of crime alert procedures. (Activity 187 relates to the effects of shoplifting on employment practices and shows how shoplifting has reduced some of the employees' freedom.)

Students should develop an awareness of the many diverse attitudes toward shoplifting and will learn of the need for law enforcement as well as his legal rights if arrested. To explore the students' attitudes, discuss with them the problem in the box below:

> You see someone shoplifting at a local drug store. What will you do?
>
> (In the above situation, does it matter what kind of store you are in? Suppose the store is a small grocery store owned by a neighbor of yours, or suppose it is a large department store owned by stockholders from all over the country.)
>
> What are the likely consequences of your action? Think of as many consequences as you can. Do you feel your action in the shoplifting incident is responsible? Can you think of alternative actions that would lead to better consequences?

(See Objectives 0.1, 0.2, 0.3, 0.4, 0.5, 0.6, 0.10, 0.11, 0.12, 0.14, 1.1, 1.3, 1.6, 1.7, 8.5, 9.1, and 9.3.)

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TAX LAW

Read and discuss the booklet *Understanding Taxes*, published by I.R.S., to help students understand the purpose of income tax laws and why they are changed or augmented.

Ask who makes the tax laws and why tax rates change. Discuss the history and background of income tax laws and also changes in these laws, rates, and deductions.

Prepare a tax return.

Ask what are consequences for the individual *and* society of failing to pay taxes?

(See Objectives 0.1, 0.2, 0.5, 1.1, 1.3, 1.6, 1.7, 2.2, 2.9, 9.3, and 9.6.)

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VIOLATIONS OF SCHOOL RULES ARE LIKE VIOLATIONS OF LAWS

Science class books are put on reserve shelf in the library for classes to use during the day. They may be checked out overnight only. Two critically needed books are missing. Apparently some student or students have taken them to have exclusive use of the material.

Since the science class will meet in the library for the week, the librarian and science teacher decide to take five minutes, or more if needed, to probe and discuss with the class their thinking on the class's being deprived of the books. They decide to ask such questions as:

Who is being hurt?

Who pays for the missing books?

How will each student's research paper be affected by not having the missing books?

What should be done about getting the books returned?

Will the students handle it, or will the teacher or the librarian exert pressure for the return of books? If so, how? (Would peer pressure be a greater influence than librarian-teacher pressure?)

(See Objectives 0.1, 0.14, 1.1, 1.3, 1.6, 1.7, 2.1, 9.3, and 9.6.)

UNDERSTANDING THE RIGHTS OF SUSPECTED CRIMINALS

Situation

A student is torn between what he hears at one place, i.e., the laws prevent the police and courts from doing their jobs -- and what he hears at another place -- i.e., criminals have rights too and should be subject to the same treatment as you and I would expect if we were arrested.

Problem

The student comes to the library to investigate the basis for the Supreme Court's decisions regarding the criminal's rights.

The librarian provides selected materials for the student's investigation and research. Provided are:

Goodman, Elaine. *The Rights of the People; The Major Decisions of the Warren Court.* Farrar. 1971. pp. 61-79.

Quigley, Charles N. *Your Rights and Responsibilities as an American Citizen.* Xerox. 1972. pp. 82-3, 121-6.

Ratcliff, Robert, General Editor. *Vital Issues of the Constitution.* Houghton Mifflin. 1971. pp. 103-25.

Starr, Isidore. *The Supreme Court and Contemporary Issues.* Encyclopaedia Britannica. 1969. pp. 62-6, 102-7.

Tresolini, Rocco. *These Liberties: Case Studies in Civil Rights.* Lippincott. 1968, pp. 9-99.

World Book Encyclopedia. "United States Constitution" (Amendments 5, 6 and 14.)

Be sure to refer students to the following cases:

Betts v. Brady (1942)

Gideon v. Wainwright (1963)

Escobedo v. Illinois (1964)

Miranda v. Arizona (1966)

Questions to ask:

1. Should the safety of society be placed above the absolute right of every suspect to have a lawyer? Some people still think so. Do you? Why?

2. Have the Gideon, Escobedo, and Miranda decisions handcuffed police? What do the experts say?

3. Should the poor, uneducated, and uninformed have the same rights and privileges enjoyed by the wealthy, if arrested?

(See Objectives 0.1, 0.2, 0.3, 0.4, 0.5, 0.6, 0.8, 1.6, 2.9, 3.2, 3.3, 3.11, 5.5, 8.5, 8.6, 8.10, 8.12, 9.4, and 9.5.)

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CENSORSHIP???

An English teacher makes the statement, "J. D. Salinger's *Catcher in the Rye* has been the most banned book in high schools." The teacher gives one of the students the assignment of researching the censorship of pornography in the U.S. He comes to the library for help. The librarian provides selected materials for the student's investigation and research. Possible materials include:

"Book Banners; Books Under Fire in the U.S. and Ridgefield, Conn." *Newsweek* 81:64 March 26, 1973.

Cohen, William. *The Bill of Rights; a Source Book.* Benziger. 1968. pp. 215-25.

Goodman, Elaine. *The Rights of People; The Major Decisions of the Warren Court.* Farrar. 1971. pp. 107-21.

Starr, Isidore. *The Supreme Court and Contemporary Issues.* EBE. 1969. pp. 156-69.

Discuss with the students Amendment I that "Congress shall make no law . . . abridging the freedom of speech, or of the press . . ." Refer students to and discuss the following Supreme Court cases:

Roth v. U.S. (1957)

Jacobellis v. Ohio (1964)

"Memoirs" (Fanny Hill case) v. Mass. (1966)

Mishkin v. New York (1966)

Ginsberg v. U.S. (1966)

Miller v. Calif. (1973)

Questions to be asked:

1. Did the Founding Fathers intend that obscenity be protected by the Constitution? What was the Supreme Court's decision in Roth v. U.S.? -- Obscene materials, by definition had no value for the community, therefore, First Amendment did not apply.

Supreme Court rules "But implicit in the history of the First Amendment is the rejection of obscenity as utterly without redeeming social importance."

2. How is one to determine whether a work is obscene or not? Can the jurists themselves even agree on a definition?

3. What was the Supreme Court's ruling in the case Jacobellis v. Ohio? Would you consider this ruling a turning point against censorship? Do you agree with the ruling? Why?

4. Should the Court have to make a ruling on every piece of literature or film as to whether it is pornography?

5. Should anyone be sent to prison for publishing obscene material? Ralph Ginzburg received a five-year prison sentence in 1966. Was this just punishment?

6. What is the Court's 1973 ruling on obscenity? Do you agree? Why?

(See Objectives 0.1, 0.2, 0.3, 0.4, 0.5, 0.6, 0.14, 1.3, 1.4, 1.6, 1.7, 2.9, 5.5, 8.3, 8.4, 8.5, 9.1, 9.4, and 9.5.)

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LICENSES TO OPERATE VEHICLES

Children are interested in transportation. They are also interested in questions like, "How old do I have to be to ... ?" This interest could be used to help them explore one major reason for why we have law -- namely, for public safety.

Ask them questions like: How much do you have to know to drive a car? How much to operate a boat? How much to fly an airplane? Ask them how old one needs to be to become licensed to operate an automobile, a boat, and an airplane. Ask them how one actually gets licensed to operate such modes of transportation. They will have some ideas that are sound and some that aren't.

Encourage students to write for information on automobile, water, and air safety and procedures for obtaining operator's licenses. They should write:

Drivers' License Bureau
P. O. Box 200
Jefferson City, Mo. 65101

Commissioner
Missouri Division of Water Safety
P. O. Box 603
Jefferson City, Mo. 65101
(Ask for "Better Boating, A Guide to Safety Afloat")

Federal Aviation Administration
Oklahoma City, Okla.

Students may also discuss licensing with resource people from the Highway Patrol, from the Coast Guard or Division of Water Safety, or from the F.A.A. or a flight training school. They will discover that licenses to fly airplanes are most difficult to obtain, and that no licenses at all are required for operating pleasure boats. They should note who does the licensing (which level of government). They could then discuss the purposes for licensing, and may discuss such matters as whether changes should be made in licensing regulations (i.e., should pleasure boat operators need licenses, should the age for automobile drivers be changed, should licenses be required for other vehicles like bicycles and farm tractors, etc.) and whether licensing is even needed.

Students may then explore licensing in other areas, such as in professions and in operating restaurants and stores. Attorneys may be contacted to discuss with students legal issues and controversies related to transportation and/or to licensing generally.

(See Objectives 0.1, 0.2, 0.3, 0.4, 0.5, 0.6, 1.1, 1.3, 1.4, 1.6, 1.7, 2.2, and 2.8.)

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LIBRARY RESEARCH: APPEALING CASES TO HIGHER COURTS

A student just received a traffic ticket which he claims was unjustly given and hot-headedly says he will carry the case all the way to the Supreme Court if necessary.

The student goes to the library seeking advice on how he can fight the case all the way to the Supreme Court. Discuss with the student the state and federal judicial systems. For what reason may a case be taken to the Court of Appeals? Does the Supreme Court have the right to refuse to hear a case? How can the average citizen help the cause of equitable justice? Which judges are appointed and which are elected?

He must realize that if the municipal court rules against him, that he may appeal the case only if an error of law has occurred. Also that the idea that any person may readily carry his case to the Supreme Court is quite wrong.

The librarian provides selected materials for the student's investigation and research, such as:

American Bar Association. *Laws and Courts in the News.*

Deming, Richard. *Man and Society: Criminal Law at Work.* Hawthorn, 1970.

Deming, Richard. *Man Against Man: Civil Law at Work.* Hawthorn, 1972.

Kling, Samuel G. *The Complete Guide to Everyday Law.* Brd. Ed. Folleet, 1973.

The Missouri Bar. *Due Process of Law.*

The librarian will also suggest that he go visit municipal court before his case is heard.

(See Objectives 0.1, 0.5, 4.2, 4.3, 4.5, 4.6, and 5.2.)

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WHY HAVE AND OBEY LAWS

The following is one teacher's account of what happened in her classroom:

"Students riding the bus reported twice in one week that their bus was the 'jinx'. Both adults and students had ignored the flashing lights and the law, 'Do not pass a stopped school bus when loading and unloading.'

"On one particular occasion, following a near crash, the first-hour journalism assignment was shelved, and students proceeded to discuss the dangers involved to both students and drivers of vehicles, as well as the fine that could be issued if such negligent drivers were reported.

"The class agreed that such drivers should be reported to the Superintendent of Schools or a patrolman. Two girls who ride the bus daily would be ready in the future with paper and pencil to record the license number of any car that passed illegally.

"When the students finished their lengthy discussion of the situation, the instructor asked them to write on the subject, 'One Day in my Life Without Law.' Students were asked to consider every angle involved from the time they left home for school in the morning until they returned home in the evening.

"Two days later, the class period was filled with the reading of excerpts from different papers. Every person, for a change, was anxious to get into the discussion and was most eager to point out the dangers if we attempted to live without even minor laws.

"Students spoke a little more appreciatively of the city police which they usually referred to as the 'town fuzz.' Other members of the class brought forth the idea that there would be no love and no understanding in the world -- only constant fighting for survival."

(See Objectives 0.1, 0.13, 0.14, 1.1, 1.3, and 1.6.)

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CURFEW

Due to a large amount of vandalism committed at night in a town, the city council imposed a curfew on all persons 16 years of age or younger unless accompanied by an adult. The curfew was in effect from 8:00 p.m. until 6:00 a.m. on week days and from 11:00 p.m. to 6:00 a.m. on Fridays and Saturdays.

1. Alice worked as a car hop at the local A & W. She was 16 years old and had to work until 11:00 p.m.

2. Donald, Mike, and Kevin wanted to go to the movies. Their parents didn't like the movie so wouldn't take the boys. They were under 16 years of age.

3. Joe (16) and his girl friend Vickie (15) decided to go to the next town, which was 50

miles away, to go shopping. They got back to their town after 8:00 p.m. and were stopped by the police and taken to the station. Their parents were called.

Discuss one or all of the above cases, considering what problems might arise, whether the students feel the particular curfew is fair, and what persons under the age of 16 can do that would encourage the city council to revise the curfew? Ask students what is the curfew in their town and how it is enforced. (The Police Department could supply the answer.) Ask them to investigate the reasons why their town has a curfew.

(See Objectives 0.1, 0.3, 0.5, 1.1, 1.2, 1.3, 1.4, 1.6, 1.7, and 6.2. Activity 68 also deals with the topic of curfew.)

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STUDENT SUSPENSION VERSUS THE RIGHT TO AN EDUCATION

This activity may be used when there is a case of suspension known to the students:[1]

A Missouri judge has stated "In the past schools solved their problem with misbehaving students by kicking them out onto the streets where they had plenty of idle time to get into trouble. They usually ended up with us."

1. Have students discuss incidents of disruptive behavior which have resulted in suspension and the purposes of the suspension in each case from the school's point of view.

2. As students in the school, how do they feel about having one student suspended so that the right of other students to an education is not disrupted?

3. What about the right of the suspended student to an education? Has the student forfeited it? Why was the need for an education not sufficiently compelling to override the student's disruptive behavior?

4. Have students role play their idea of the ideal way of handling a student suspension case. If students propose different procedures from those actually used at school, encourage them to give reasons for the changes they propose.

(See Objectives 0.1, 0.4, 0.6, 0.8, 0.9, 0.10, 0.12, 0.14, 1.1, 1.3, 1.4, 1.5, 1.6, 2.2, 3.1, 3.3, 3.4, 6.2, 7.1, 7.3, 7.6, 7.7, 8.10, 9.3, 9.4, 9.5, and 9.6. Also, examine Activity 142.)

[1] The teacher may feel that this activity is "too hot" to handle at the time a suspension occurs or at any time. Teacher discretion with this and all activities in this guide is essential.

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WHAT WOULD I DO? -- A VALUES CONTINUUM

The values continuum and rank ordering shown in the box below is included as an example of a way of clarifying values and reaching a reasoned decision. You can use the situation below. Better yet, make up other ones for classroom use.

Allow students who wish to change their rankings on a second round to do so if they have changed because of reasons put forward by other students. If they do change their rankings, however, they should explain what made them re-think their position.

Also, have students investigate how in fact local police actually handle such cases as that described below.

You are standing on the street in your neighborhood when you see a police car drive up to a group of teenagers. The officers jump out, grab two of the boys, tell them they are under arrest for drug pushing, and order them into the police car.

1. What would you do?

Extreme Passive
(Do nothing)

Extreme Active
(Get a group to go with
you to picket the police station.)

2. Now consider more carefully the main consequences of the alternatives listed below as the next step in deciding what to do.

You know one of the boys arrested has smoked marijuana, but has probably not pushed either marijuana or hard drugs. Here are your choices:

1. You can stay out of it altogether, and let the boy "learn a lesson" that will scare him off of pushing. Even if the police come around the neighborhood, you decide to say nothing.
2. You can call the police station the next day and offer to testify that you believe the boy is not a pusher, that he comes from a good family and is a member of your church.
3. You can follow the police car down to the District Station and there (a) protest the boy's innocence, and/or (b) insist that the police give the boy his full Miranda rights.

What are the consequences of each course of action? Rank the 3 choices according to what *you* would do, and tell why.

3. What are some other alternative courses of action you could take and their consequences?

(See Objectives 0.1, 0.6, 0.7, 0.14, and 9.3.)

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BRIEFING A LEGAL CASE

In briefing a legal case answer the questions below:

Case name ________________________________
Who originated the suit? ________________________________
Court giving ruling opinion ________________________________
Decision Date ________________________________
Facts -- Who did what to whom, where, when, what circumstances?
____
____

Legal issues or principles in initial trial
What are legal arguments of each side? ________________________________
____
____

Action asked by plaintiff (or state) ________________________________
____
____

Verdict of lower court ________________________________
Appeal on what grounds? ________________________________
Majority decision of court hearing final appeal ________________________________
Reasoning on main issue or legal principle ________________________________
____

Dissenting opinion and reasoning ________________________________
____

Major significance of case
What legal standard on the issue was established/settled/developed? ________________
____

Were precedents cited continued/changed/overturned? ________________________________
____

What was significance of decision for the particular person or persons in the case? ________________________________

The form is useful for helping a student or teacher follow the progress of a case through the entire court system.

(See Objectives 0.1, 0.2, 0.3, 0.4, 0.5, 0.6, 0.7, 1.7, 2.9, 5.5, and 5.8. See also Activity 56, which is similar to this activity.)

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THE CASE OF THE CEDAR TREES

An excellent first book on the U.S. Supreme Court is Harold Coy's book *The First Book of the Supreme Court* (New York: Franklin Watts). Read to the class the story of Miller v. Schoene, which appears in Coy's book. In the case Mrs. Miller is ordered by the state entomologist to cut down her cedar trees because the cedar rust on her trees endangered many apple orchards. She went to court. When she lost in the lower courts, she took the case all the way to the Supreme Court but lost the decision.

Have children draw pictures of apple trees and cedar (Christmas) trees.

Divide children into small groups, probably five in group, and ask them to make a decision as to what they think would be right.

(See Objectives 0.1, 0.3, 0.4, 0.5, 0.6, 0.7, 1.3, 1.7, 2.2, 2.13, 3.3, 3.11, 4.3, 4.5, 5.5, 7.1, 7.3, 9.4, and 9.5.)

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"YOUTH AND THE LAW"

1. Using the pamphlet "Youth and the Law" (available from the Women's Auxiliary, St. Louis University School of Law and the Women's Crusade Against Crime), discuss with the class what the implications of the ideas in the pamphlet are.

2. Let students tell or role play the many consequences that result when certain laws are broken.

3. Let students suggest consequences that would follow if certain laws were abolished.

4. Role play some of the situations that are labeled as "frequent juvenile offenses" in the pamphlet. Include in the role plays the consequences to the offender and the victim.

5. Have a student invite an attorney to class. Together, they could portray a discussion between an attorney and his or her juvenile client in preparation for a case involving some specific juvenile offense the juvenile was accused of committing. The attorney should ask all sorts of specific questions to determine what happened and his client's involvement. He should then tell his client what he advises that they do in his client's defense. Following that discussion, encourage students to ask questions about the hypothetical case at hand and about juvenile court procedures.

(See Objectives 0.1, 0.2, 0.3, 0.5, 1.1, 1.3, 1.6, 1.7, 2.4, 2.8, 3.11, 4.3, 6.1, 6.2, 6.3, 6.4, 7.1, 7.3, and 8.5.)

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CREATING AND CONDUCTING A MOCK TRIAL

Develop a mock trial of a civil or criminal case. A committee of students can develop this with the help of a lawyer and present it to the class. Suggestions for mock trials may be found below, in the booklet *Law and the Courts*, produced by the American Bar Association, in *Vital Issues of the Constitution* edited by Robert Ratcliff (Houghton Mifflin), and in *Voices for Justice* by Quigley and Longaker (Ginn). An excellent film that could be used to observe the roles of people in trials is *The Bill of Rights in Action: The Story of a Trial* (BFA Educational Media). The class could also visit a courtroom to see a trial in action, and learn of roles people take in courtroom trials.

Roles to be assigned:

a. Clerk of the Court

b. State's Attorney (for criminal cases)
Plaintiff's lawyer (in civil cases)

c. Defense attorney (for civil or criminal cases)

d. Defendant

e. Plaintiff (in civil cases)

f. Witnesses for State (in criminal cases)
Witnesses for plaintiff (in civil cases)

g. Witnesses for defense (for criminal or civil cases)

h. 12 jurors

i. Judge

j. Court reporter

k. Bailiff

Sequence of the Trial

The following is the order for civil and criminal trials.

1. Opening of the court by the clerk.

2. Seating and swearing in of the jury by the clerk.

3. Opening statements to the jury by the attorneys (five minute maximum) for each attorney.

   a. State or plaintiff's attorney
   b. Defense attorney

4. Direct examination and cross-examination of State or plaintiff witnesses. (State or plaintiff's attorney first, then the defense attorney cross-examines.)

5. Direct examination and cross-examination of defense witnesses. (Defense attorney questions first, then State or plaintiff's attorney cross-examines.)

   *Numbers six and seven would be reversed in order if the trial was in a Missouri State Court. The order shown is just for a Federal District Court case.

*6. Closing arguments to the jury. (Defense attorney first, then State or plaintiff's attorney, five minute maximum for each attorney.)

7. Instructions to the jury by the judge.

8. Deliberations of the jury.

9. Verdict delivered by the foreman of the jury.

Clerk of the Court

1. Assist the teacher in the direction of the trial.

2. Check before the trial to see that the courtroom has been set properly.

3. Bring a watch to the trial and assist in enforcing time limits.

4. If requested by the teacher, make notes of the performance of trial counsel.

5. Immediately after the trial is over see to it that the classroom is returned to order. Return all paper, gavels, etc.

6. Bring the Court to order by reading the official Opening of the Court, as follows:

Clerk: The Court of (city, state) is now open and in session, the Honorable Judge
__________________ presiding. All persons having business before the court come to order!
Case of the (title of case)
Is the State ready? (let State's Attorney answer)
Is the defendant ready? (let the Defense Attorney answer)
Your Honor, may the jury be brought in? (let the judge answer)

7. The Clerk fills the jury box with the students who have been assigned roles as jurors. Then, the jurors are sworn in as follows:

Clerk: The jurors will rise, raise their right hands and be sworn. Do you solemnly swear that you will well and truly try the issues now to be given you? That you will speak nothing to anyone of the business or matters you have in hand, but among yourselves; nor will you suffer anyone to speak to you about the same but in Court; and when you are agreed upon any verdict, you will keep it secret until you deliver it up in Court? Do you all so swear?

(let the jurors say "I do")

After the jury has been sworn in, the State's (plaintiffs) attorney will make an opening statement to the jury. After that, the defense attorney will make an opening statement. Then the witnesses will testify. Before each witness takes the witness stand to answer questions for the first time, you should swear him in. Ask the witness to put his left hand on the Bible, raise his right hand and answer the question, "Do you swear to tell the whole truth and nothing but the truth in this case, under penalty of perjury, so help you God?" When the witness answers "I do", you should tell him to sit down.

After all the witnesses have appeared and testified for both the State and the Defense, the Clerk will rise and announce, "The Court will now charge the jury. No one will be allowed to leave or to enter the room during the charge."

State's (Plaintiff's) Attorney

As State's Attorney your job is to present the evidence against the Defendant. Your job consists of four main parts:

(1) *Opening Statement to the Jury* - Immediately after the jury has been seated and sworn in you will have a chance to make a five minute summary of what you think the evidence in the case will show. This should include a very brief summary of the facts and a sentence or two summarizing what each of your witnesses will say.

(2) *Direct Examination* - After the Defense Attorney has had a chance to make his opening statement, you will begin with a direct examination of your witnesses. This means that each of your witnesses will be sworn in, one at a time, and you will have a chance to ask them questions. Each question you ask them should give them a chance to tell a fact about the case. You should have a good idea what they will answer to each question and you should ask questions that will produce answers that can be useful to your case.

The Defense Attorney will have a chance to "cross-examine" your witnesses - that is, to ask your witnesses questions after you have finished with them.

(3) *Cross-Examination* - When all of your witnesses have been questioned by both you and the defense attorney, the defense attorney will have an opportunity to present his witnesses. He will begin by asking them questions, and then you will have a right to "cross-examine" them. The purpose of the cross-examining witnesses is to get additional explanations of some of their earlier answers. For example, if the witness only told half of what happened when the defense attorney questioned him, you may want to question him about the other half.

(4) *Closing Argument* - After the defense attorney has presented all his witnesses and you have had a chance to ask him questions, it will be time for "closing argument." Your argument will come last after that of the defense attorney. You will have five minutes for a closing argument. In this part of the trial you should try to summarize all the points which the witnesses made which help your case. Do not go over everything -- you won't have time. Try to point out the most important things. The final argument will mark the end of your job.

Defense Attorney

As defense attorney your main job is to show that the state's attorney does not have enough evidence to convict your defendant because it cannot be depended upon or because it doesn't make sense, or because some of the witnesses disagree with each other. Your job consists of four main parts:

(1) *Opening Statement to the Jury* - After the state's attorney has made his

opening statement you will have five minutes to summarize what you think the evidence in the case will show. You should try to emphasize that you think there are disagreements between the witnesses or that there simply isn't enough evidence to prove that the defendant committed the crime.

(2) *Cross-Examination* - The state's attorney will have the first opportunity to question his witnesses. At the end of his questioning of each witness, you will have a chance to ask that witness questions. Listen carefully to what the witness says. See if you can find something that he said that you think doesn't make sense, and ask him about it. The purpose of cross-examining witnesses is to find out if some answers they gave to questions asked by the state's attorney need additional explanation. For example, if the witness only told half of what happened you might want to ask him to explain the rest.

(3) *Direct Examination* - When the state's attorney has finished presenting all his witnesses you will have a chance to present your witnesses. This is called the "direct examination." Your job here is to ask the witnesses questions that will let them tell their story. After you have questioned each witness, the state's attorney will have a chance to cross-examine.

(4) *Closing Argument* - When you have completed your questioning of the witnesses and the state's attorney has finished cross-examining, each attorney will have a chance to make a closing argument. You make your argument first. You have five minutes. You should try to summarize the main points that your witnesses brought out that show that the defendant did not commit the crime. You might emphasize any disagreements between witnesses or anything in the stories of the witnesses that shows that your defendant did not commit the crime. Don't try to go over everything that happened at the trial, only the most important points.

Witnesses

As a witness your job is to tell the members of the jury what you believe happened according to what you actually saw and heard. Each of you should receive a script so that everyone will talk about the same event. If this were a real case, scripts (even notes) would usually not be allowed for most witnesses.

You will find that both the state's attorney and the defense attorney will be asking you questions. If you are a witness for the State, the state's attorney will start; if you are a witness for the defense, the defense attorney will begin the questions. After the first lawyer has had a chance, the other will be able to ask you questions. Try to stay as close as you can to the script you have been given when answering the questions. Don't add extra facts, even if you think it will help, because you will confuse the lawyers and the other witnesses.

Judge

Your job as judge in this trial is to make sure that the procedure of a trial is followed so that both sides have a chance to present their cases. One of your main jobs is to give instructions to the jury after the closing arguments have been made. You will be given a script for the instructions. The purpose of giving instructions to the jury is to tell the jurors what the law is. They are supposed to be guided by the law in making their decision in this case, and you have to help them find out what the law is.

After the jury has made its decision, you should ask the foreman to rise and tell the class what the verdict is. Once the verdict has been announced, you can tell the class that the trial is over.

Jury

The jury in this case is going to work a little differently from the way a jury works in a real case. The difference is that you will come to your decision in front of the whole class. In a real trial, it would be done secretly, but here we want the whole class to see how a decision is made.

While the witnesses are being questioned and giving their answers, you should pay close attention to what is said. Be careful to see whether the witness's story makes sense. Try to remember how the story of one witness compares with the story of another witness. If they don't seem to fit together - or if one of the witnesses seems to be making a mistake, you should try to remember that.

Listen to the closing argument of the defense attorney and of the state's attorney. Then, the judge will give you instructions. The instructions will tell you what the law is for this case.

After you have heard the judge's instructions, you should start your deliberations -- that is, your decision in this case. You might take a vote at the beginning to see what each member of the jury thinks about the case. Then you can begin to talk about the witnesses. Each member of the jury can tell in one or two sentences what he thinks about the witnesses' evidence. Which witnesses did you believe? Which ones did you *not* believe? Why?

Here, the teacher might ask you a few questions to help you reach a decision. Take another vote. After three votes, you should have come to a final decision. In real cases, the vote would have to be unanimous 12-0 for conviction in a criminal trial and three-fourths of the jury in a civil trial. But, in this case, if you can't get the proper verdict, then the majority will rule.

Foreman: Your job is to conduct the votes. After the third vote, you should tell the jury that the decision is made, and you should indicate to the judge that the jury is ready to give its verdict. When the judge ask you for the verdict, you should rise and tell him the answer.

(See Objectives 0.1, 0.6, 0.7, 1.1, 1.3, 1.6, 1.7, 3.2. 3.3, 3.5, 3.9, 3.11, and 3.12.)

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LITERATURE AND THE LAW

Novels and short stories often deal with law-related themes. A few of the many examples are *The Ox-Bow Incident* by Walter van Tilburg Clark, *Billy Budd* by Herman Milville, *The Hidden Flower* by Pearl Buck, *Mutiny on the Bounty* by Charles Nordhoff and James Norman Hall, *Inherit the Wind* by Jerome Lawrence and Robert E. Lee, *To Kill a Mockingbird* by Harper Lee.

(See Objectives 0.1, 0.3, 0.6, 0.9, 0.11, 0.12, 1.7, 3.2, 3.3, 3.4, 3.5, 3.10, 3.11, 3.12, 7.1, 7.3, 7.5, 7.6, 7.7, 8.10, 9.2, 9.3, 9.4, 9.5, 9.6, and 9.7.)

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USING "THE FAMILY LAWYER"

THE
FAMILY
LAWYER

The "Family Lawyer" is a weekly newspaper column produced by the American Bar Association and distributed by The Missouri Bar to newspapers in Missouri. The column is available to newspapers free of charge. Three sample columns appear in the boxes below. If your local newspaper does not carry "The Family Lawyer" and you think it would be useful in your classwork, advise your newspaper's editor of your interest. To receive the column, he need only contact The Missouri Bar, P. O. 119, Jefferson City, Missouri, 65101.

Forest Frolic

Two youths, vacationing in a national forest, decided to go skinnydipping in a mountain stream. They were undeterred by the nearness of a public campground, where signs forbidding nudity had been posted.

In short order, a ranger showed up and placed the pair under arrest. Later, at a court hearing, they insisted that forest officials had no right to regulate personal conduct unless that conduct was harmful to the forest itself.

But the court said the government could regulate not only the use of the forest but also the way people behaved there. As one judge put it:

"The Government of the United States as a sovereign has a right to make its own rules as to the use of its own lands, however unjust it may seem to (individual) citizens."

A comparable issue arose when automobiles were banned from another national forest. Owners of nearby property complained in court that they were cut off from easy access to their land.

But again, the court upheld the government's action. Banning cars, said the court, was a reasonable step toward "preserving the wilderness in a primitive condition."

On the other hand, while nature lovers must submit to the power of government, they also have substantial rights against the government in case of injury. Under the Federal Tort Claims Act, they may hold the government liable for negligence.

For example:

A woman climbing a trail in a national park was hurt by a falling boulder. Although rocks had fallen frequently along that trail, no adequate warning was given to the visiting public.

The result was that the woman was able to collect damages from the government. The court said climbers were entitled to, if not perfect safety, at least an honest disclosure of the risk.

Dress Code For Teachers?

Hamilton, a high-school teacher, came back from summer vacation sporting a new mustache. Informed that he was violating the rules of the school, Hamilton nevertheless refused to shave it off.

Result: the principal fired him.

In short order Hamilton went to court to protest. And the court held that he was entitled to retain both the job and the mustache. Describing the principal's action as arbitrary, the judge said:

"There is no indication that mustaches had caused, or were likely to cause, any disruption or disturbance; no indication of any health or sanitation problem; no indication of difficulties of any sort."

Most courts are inclined to take a similar attitude with regard to both mustaches and beards. They say schools cannot impose a "dress code" on teachers unless it has some reasonable relationship to the welfare of the school.

However, one court took a different view of a rule requiring teachers to wear neckties. In this case, the school board argued that a teacher could exert greater influence on students if his appearance was impressive.

And the court, noting that neckties were "conventional attire for those in positions of leadership," decided to uphold the board's position.

What about tardiness? One teacher was late for class almost half the days of the school year. Fired for shirking his responsibilities, he insisted in court that discharging him was too drastic.

But he offered no excuse at all for his chronic tardiness. Again, the court upheld the action of the school board.

"Such conduct," said the court, "without sufficient reason constitutes wilful neglect of duty."

Swearing On Telephone

At frequent intervals, terrible tempered Gerald would swear a the operators in the local tele phone office. Warned to ceas and desist, he paid no attention.

Finally the company disconnected his service. Gerald, angrier than ever, went to court to demand damages.

"This is censorship," he charged at the hearing. "A little profanity just happens to come natural to me. They have to make some allowance for human nature."

But the court ruled that Gerald had no claim. The court said a telephone company has the power to impose reasonable restrictions, such as a ban on profanity, in the use of its facilities.

However, these restrictions must indeed be reasonable. Another case also involved a subscriber who had used purple language to an operator.

But this time, after the man received a warning from the company, he had not repeated the offense. Only later, as an afterthought, did the company cut off his service.

A court ruled that in this situation, the company had acted in an arbitrary and unlawful manner. The judge said the subscriber was entitled to a fair chance to "mend his ways before being deprived of this most convenient means of communication."

In a third case, a woman's telephone was disconnected because —said the company—she had refused to pay her bill. It turned out, however, that there was a bona fide dispute as to how much money she really owed.

A court, again invoking basic fairness, held that the company could indeed be assessed for the harm done, since this was no way to settle an honest argument. There would have been plenty of time, the court felt, to cut off service after the rights and wrongs of the argument had been ironed out.

"Family Lawyer" features may be used as a source of ideas for class discussions. The teacher could read the article to the students up to the point where the article cites the particular decision. Students could then discuss what they think should be the decision. The discussion could take many forms: (a) mock trial, (b) debate, (c) small (buzz) group discussions, (d) fishbowl discussion, (e) discussion by the entire class, etc. Another use of "The Family Lawyer" would be for students to be assigned to report on the feature or to role play for the class the incident dealt with in the particular feature.

The game *Point of Law* (3M Company) deals with similar kinds of cases and has been used with success by some Missouri teachers.

(See Objectives, 0.1, 0.3, 0.4, 0.6, 0.7, 0.10, 1.1, 1.3, 1.4, 1.5, 1.6, 1.7, 2.9, 2.13, 3.1, 7.1, 7.3, 7.6, 7.7, 7.8, 8.5, 9.1, 9.3, 9.4, and 9.5.)

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RACIAL DISCRIMINATION AT THE FACTORY

Discrimination on the basis of race in the corporate setup has come under increasing scrutiny. By designing a fact situation based on an actual happening, the business teacher can delve into the possible ramifications of a "personnel problem" and its constitutional implications.

The case in the box below is an example of a fact situation that could be used for discussion:

World Wide Wicket Company is a firm believer in "equal employment opportunities" for all races. Unfortunately, they employ a foreman at their Backwater, Missouri, plant who hates anyone who is not a WASP. His name is John B. Igot. Regardless of what the law says about the illegality of discrimination, he won't allow the government to force black people on him in his department.

Since it would be a violation of company policy to refuse to take black people into his department who were sent by the personnel department, Igot used various ploys to get rid of them. First, he would give them the absolute minimum of training for their job so that their work would be poor and they wouldn't be retained after the probationary period. If they did make it past the probationary period, he would harrass them out the department by continually ridiculing and yelling at them for every little mistake they made. If that didn't work, Igot would give them frequent "warning notices" for substandard work so they could not get merit increases in wages or promotions.

These ploys were obvious to Igot's supervisors, but he was an excellent foreman in other respects and his department was a good producer of Wickets. The supervisors lectured Igot on the necessity of mending his ways. Igot would always promise to change, but never did.

Finally, the supervisors decided that the only way to keep Igot and still conform with the law and company policy was to transfer any blacks who were in Igot's department to another and not assign any more to his department. The blacks who were transferred did not like this idea and filed a complaint with the Equal Employment Opportunity Commission. The company defended their actions by claiming that their record of employing minority workers was better than that of any industry in the community or any company in the Wicket industry. Also, they claimed that their action was designed to keep the blacks from being discriminated against or harrassed. What should the Commission do?

In the actual case the Commission decided that the company must fire the foreman if he is unfit to supervise blacks (E.E.O.C. Decision No. 71-357). The policy of not assigning blacks to racially biased foreman keeps blacks out of certain jobs. The company cannot protect such biased foreman by not assigning blacks to their departments. Would you choose to tell your students of the Commission's decision? When?

(See Objectives 0.2, 0.3, 0.4, 0.5, 0.6, 0.7, 0.8, 0.9, 0.10, 0.11, 0.12, 1.1, 1.3, 1.4, 1.5, 1.6, 1.7, 2.13, 3.1, 9.4, and 9.5.)

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WHY HAVE LAW? SOME BASIC IDEAS AND STRATEGIES

Most adults accept the fact that we need law. Yet, we may not think about the reasons, or we may emphasize some reasons so much that others are forgotten. A teacher's guide developed by the University of the State of New York/The State Education Department Bureau of Secondary Curriculum Development listed several understandings related to the topic "Why Have Law."[1]

1. *Law serves as a necessary means of social control over anti-social behavior.* In other words, law helps protect people against agression. Of course, education and group pressure also play a major role in protecting people from anti-social acts.

   Activities related to this understanding include searching through newspapers to find examples of the law working to assert social control over individuals. Students could also study trends related to various anti-social acts using the *Readers Guide to Periodical Literature*. Students could study specific cases involving specific anti-social acts and act out trials in which those acts were involved.

2. *Law serves as an effective means of providing accepted processes for resolving disputes that could lead to violence or unjust solutions.*

   The teacher could present the class with cases in which two parties are in dispute with one another. These questions could be explored: What is the nature of the dispute? How can the dispute be resolved? Once a few such cases are discussed, the students could make up their own hypothetical cases. The class could role play civil case procedures and carry out a mock trial based on one of their hypothetical cases. Ideally, in the processes of such activities an attorney or two could be on call to advise the class on the actual procedures that would be likely to be used in such cases.

3. *Law serves as a necessary means of providing social guidance in daily affairs.* Examples of such guidance, often taken for granted, are laws on weights and measures, laws

on traffic control, and laws on licensing for professional qualifications, laws assuring people have requisite skills needed to operate vehicles, laws regulating the use of certain public property, e.g. air waves, and laws regulating the performance of certain private acts such as hunting and marriage.

Students could be given cards for skits related to questions beginning as follows: "What if there were no laws that...?" The last part of the sentence could consist of a phrase like "regulate traffic," "provide for licensing of doctors," etc. The teacher could even argue that such laws restrict freedom -- e.g., "Why can't I make my inches be longer than those on a ruler?" "Why can't I practice surgery?" Guest speakers who have expertise on such regulation could be invited to class. These people need not be attorneys; they could be practitioners in licensed fields, traffic policemen, officials who determine the accuracy of scales at grocery stores, and so on.

4. *Law is the only means of providing for social benefits through public action.* Law provides for public programs like defense, education, public works projects, research in agriculture and medicine, and others. Students could search through newspapers for examples of programs set up by law. They could also group the programs in categories they develop and make scrapbooks that pertain to each category. As students collect their articles, they should work toward answers to the following questions:

   a. What are some functions accomplished by public planning?

   b. What are the main characteristics of the program?

   c. What are some advantages and disadvantages in having such functions as those listed in 4. a. fulfilled by public programs as opposed to by private action?

   Students could carry out in-depth studies of specific public programs, abstracting major current policy issues related to those programs. Guest speakers with expertise could be identified and invited to class to provide insights in addition to those obtained from reading.

5. *Laws serve as a necessary means of support for providing social benefits through private action.* Law is important in maintaining private arrangements that provide for social benefits. Laws provide support in numerous ways for job security, procedures by which sales are made, marriage, giving away possessions, forming companies, and including insurance and private education, are regulated or protected by laws for the good of society.

   Students could list all sorts of private arrangements between people that provide for the good of the individuals and/or for the good of society. They could then discuss what role law plays in these arrangements and whether law is actually necessary to support those arrangements. One place one could turn to find examples of how law provides support for charities, religious freedom, and business might be the Missouri Constitution.

   In come cases there might be debate on whether some activities are best carried out as private programs or as public programs. Specific programs can be discussed in terms of whether services are available to many people, the quality of the service, and the cost of service. Debates could be held on whether laws should be changed so that medical care can be carried out as a public program or whether laws should be passed doing away with public education and in support of private education.

Students could act out skits or draw cartoons showing what would happen if certain private actions were not supported by law -- e.g., a partnership contract -- of if certain arrangements were made into public programs.

[1] The teacher's guide is entitled *Teaching About Basic Legal Concepts in the Senior High School; Module I — The System: Who Needs It?* Some of the ideas here were suggested by the guide.

(See Objectives 0.4, 1.1, 1.3, 1.4, 1.5, 1.6, and 1.7.)

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Media: An Annotated Catalogue of Law-Related Audio-Visual Materials (Lists and describes over 400 films, filmstrips, and tapes.)

Directory of Law-Related Educational Activities (Provides information on over 250 projects throughout the nation.)

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[1] As long as this bibliography may look, it is far from complete.

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IV. Audio-Visual Resource Materials

Rather than list audio-visual resource materials here, the reader should write the Missouri Bar (P. O. Box 119, Jefferson City, Mo. 65101) to request *The Missouri Bar Educational Film Catalogue,* which lists many films that may be borrowed from the Bar.

Also, write the ABA Special Committee on Youth Education for Citizenship (1155 East 60th Street, Chicago, Illinois 60637) to request a complimentary copy of *Media: An Annotated Catalogue of Law-Related Audio-Visual Materials.* That catalogue lists over 400 materials and gives information about cost and where they may be ordered.

A RESOURCE TEXT FOR THE TEACHER

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Chapter I .... Why the Law?
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A RESOURCE TEXT FOR THE TEACHER

I. WHY THE LAW?

GOAL: *This chapter is designed to show (a) the need for laws or rules in society and (b) the positive or freeing aspects of law as opposed to the restrictive aspects that most people view as the only aspects of law.*

I. WHAT IS LAW? (discussion question)

A. Law can be defined as:

1. The binding custom or practice of a community.

a. The need for a system of law and its sophistication depends upon population size and the complexity of a society.
Anytime you have two or more people together who must interact, some form of rules develop whether written or not.

b. As it says in *Due Process of Law*, a book available from the Missouri Bar: "Every primitive society from its beginning has had law. Even savage tribes have a fairly well established legal system, since law is simply a statement of principles which has grown out of problems resulting from people living together. In this country much of the law can be traced back to principles evolving from Ecclesiastical Law, and established in the English courts during the Fifteenth Century."

2. Rules of conduct enforced by a controlling authority.

a. These rules of conduct can be found in codes, statutes, ordinances, and administrative regulations as well as in common law precedents.
(1) In criminal law, most rules are found in the former sources.
(2) In civil law, the rules are most often found in court decisions.

b. Initially, the "controlling authority" is the police and prosecutor in criminal law. The court acts as an umpire between the accused and the prosecutor until the case has been adjudicated.

II. WHY ARE THERE LAWS? (discussion question)

A. *To lessen cultural shock.* Law adds certainty and security to our lives that certain behavior is acceptable and that actions or written instruments will have a desired result or interpretation.

B. *To protect society or individuals from misdeeds of others.*

1. These misdeeds can be purposeful or accidental.
2. Laws protect men from others' misdeeds or provides a remedy.

C. *To uphold the morality of the day.*

1. This is more-or-less true.

2. Statutes or case decisions that set standards of behavior can be said to reflect the morality of the day.

3. However, there are three caveats to this view:

   a. Morality changes over a period of time. A statute that reflects yesterday's morality when it was enacted may not reflect today's morality.
   b. A particular statute may not reflect the morality of the populace because of the compromise inherent in its passage.
   c. Case decisions may not reflect the morality of the day because of the particular makeup of a jury.
   d. But, in general, the premise is true.

D. *To assign priorities to problems of the day.* A comparison of laws of primitive societies to those of the United States would show a great variation in emphasis.

   a. We in the United States have developed our laws beyond those necessary simply for survival.
   b. Today's priorities may be civil rights, the environment or various subjects of concern.

E. *To provide for orderly change.*

F. *To lessen conflict and controversy.*

III. WHAT IS THE ROLE OF LAW? (discussion question) If one were to try to incorporate all the reasons above into statements of the role of law in a free society, one would probably come up with:

A. To provide a systematic and reasoned solution for social conflicts.

B. To influence conduct to provide for the safety, protection and personal freedom of the individual.

C. To facilitate the operation of business and commerce. (Business and commerce includes transactions between people as well as corporations.)

IV. IN FULFILLING THAT ROLE, HOW DOES LAW AFFECT US? (discussion question)

A. How does law restrict us?	B. Positive result of that restriction in terms of the role of law:
1. Zoning laws may restrict the right to use our property the way we want to.	1. It also keeps a person from building an animal rendering plant next door to our home, thus fitting under IIB.
2. Forces an estate to go through probate.	2. This comes under IIB and IIC (see The Missouri Bar pamphlet "The Purpose and Functions of the Probate Court"). The probate court: a. "protects the rights of one's heirs and assures the orderly transfer of the deceased's property after his death, either in accordance with his wishes if he left a Will, or by law if he died without having made a Will." b. Protects the rights of the deceased's creditors, corporate or individuals. c. "allows the estate to conveniently collect any debts that might have been owing to the deceased at the time of his death." d. "guarantees the collection of any taxes which might be due by reason of the transfer of the decedent's property." e. "establishes clear title to any real estate which the deceased

A. How does law restrict us?	B. Positive results of that restriction:
	might have owned at the time of his death." f. "makes certain that the rights of the deceased's widow are protected — or at least that she is made aware of the existence of those rights." g. Supervises estates of minors and those whom the Court finds to be mentally incompetent.
3. Makes us pay taxes.	3. Supports widows and orphans, builds highways, pays school teachers salaries. Thus, fits into IIb and IIc.
4. Is so complex that I have to get a lawyer for every legal hassle.	4. Refer to Missouri Bar pamphlet "Meet Your Lawyer". Also *Due Process of Law Teacher's Guide*. This fits under IIa, IIb, and IIc. General answer: As was said earlier: "The number of laws and their complexity is in direct proportion to the number of people and the complexity of a society." In order to properly fulfill the role of law, specialists in the application, processing and interpretation of laws have developed. This frees the individual from an impossible task.
5. Makes professionals like lawyers, doctors, barbers, cosmetologists, teachers	5. Protects people (IIb) from incompetents. Why barbers and cosmetologists?

A. How does law restrict us?	B. Positive Results of that restriction:
get licenses or certification.	Possibly because barbers used to "let blood" and there is the danger that cosmetologists might dispense cremes and drugs that are detrimental.
6. Customs laws and immigration.	6. Comes under IIb and IIc. Protects jobs and business from adverse competition. Protects the populace from diseases and an influx of people that our economy could not absorb.
7. Limits the use of firearms.	7. Comes under IIb. Protects individuals from the discharge of firearms in cities, etc.
8. Property laws and recording statutes.	8. Comes under IIa, IIb, and IIc. Failure to have such laws could result in problems like the range wars in the 1800's out West.
9. Traffic laws.	9. Comes under IIb. People can operate cars with confidence that most drivers will stay on their side of the road and stop at stop lights.
10. Juvenile laws.	10. Comes under IIa and IIb. Allows for discipline and guidance of youth without the stigma of criminality. Refer to Missouri Bar pamphlet "You Can't Touch Me" and later chapter on Juvenile Courts.
11. Criminal laws.	11. Ensures IIa and IIb.

V. CONCLUSIONS:

A. Law is a positive force more than it is a restrictive force.

B. Any restrictions upon an individual are imposed to ensure that the law fulfills one or more of its roles:

1. To provide a systematic and reasoned solution for social conflict.
2. To influence conduct to provide for the safety, protection, and personal freedom of the individual.
3. To facilitate the operation of business and commerce.

C. Students will appreciate more fully the positive aspects of the law if they consider the role of law and how personal freedoms would be affected were there no laws. It beats anarchy.

II. HOW THE LAW DEVELOPS

GOAL: *This chapter is designed to show how law changes to meet the changing needs of society. Also, it is intended to show the sources of law and their relationship.*

I. THE LAW IN A CHANGING WORLD AND CHANGING SOCIETY.

A. The law is molded and developed by changing conditions that create new appreciations and viewpoints in dealing with old problems and create new problems.

B. There are five sources of change in the law:

1. The legislative branches.
2. Administrative bodies.
3. The executive branches.
4. The judicial branches.
5. The people.

II. THE LEGISLATIVE BRANCHES.

A. The federal legislature enacts federal statutes.

B. The state legislatures enact state statutes.

C. Elected municipal officials enact municipal ordinances.

D. Because the legislative branches are popularly elected and have as their primary task the passing of needed legislation, they are fairly quickly reactive to changes in public mood and mores. Examples of change brought about or studied by the legislative branches:

1. Federal level —
   a. civil rights legislation resulting in substantial changes with respect to minority groups and women.
   b. the consideration of a national no-fault insurance bill.
   c. proposed changes in the federal tax laws.
   d. review of campaign financing laws.

2. State level —

the Missouri legislature enacted a no-fault divorce statute (Marriage Dissolution Act) which went into effect January 1, 1974. (See Vol. 29 *Missouri Bar Journal* #8, pp. 496-528, November-December, 1973, for general informaion.) This statute was in response to citizen and lawyer pressure for more equitable divorce laws

to replace the antiquated laws which often caused perjury and other problems. A Missouri Bar Committee developed a model bill which the legislature enacted with changes.

3. Municipal level —
   a. most municipalities have done away with the laws that require horses and carriages to be operated in certain ways on city streets.
   b. with the advent of the automobile came new regulations on speed and traffic control.

E. The way that a law is enacted in the federal legislature is set out in the diagram below. The same method is used in the state legislature. Municipal ordinances do not follow the same method of enactment.

III. THE EXECUTIVE BRANCHES AS SOURCES OF CHANGE IN THE LAW.

A. The executive, be he president or governor, can effect change in the laws through directives to the administrative bodies within his control.

B. The executive, especially at the federal level, can issue "orders" that often have the force of law until challenged and overturned in the courts. For example:

The executive order requiring contractors with the federal government to undertake positive action programs in hiring minority workers.

C. Through the treaty power given to the federal executive, law can be changed with respect to a foreign nation which will affect a citizen. For example:

A treaty with a foreign country for the protection of migratory birds.

IV. THE ADMINISTRATIVE BODIES AS A SOURCE OF CHANGE IN THE LAW.

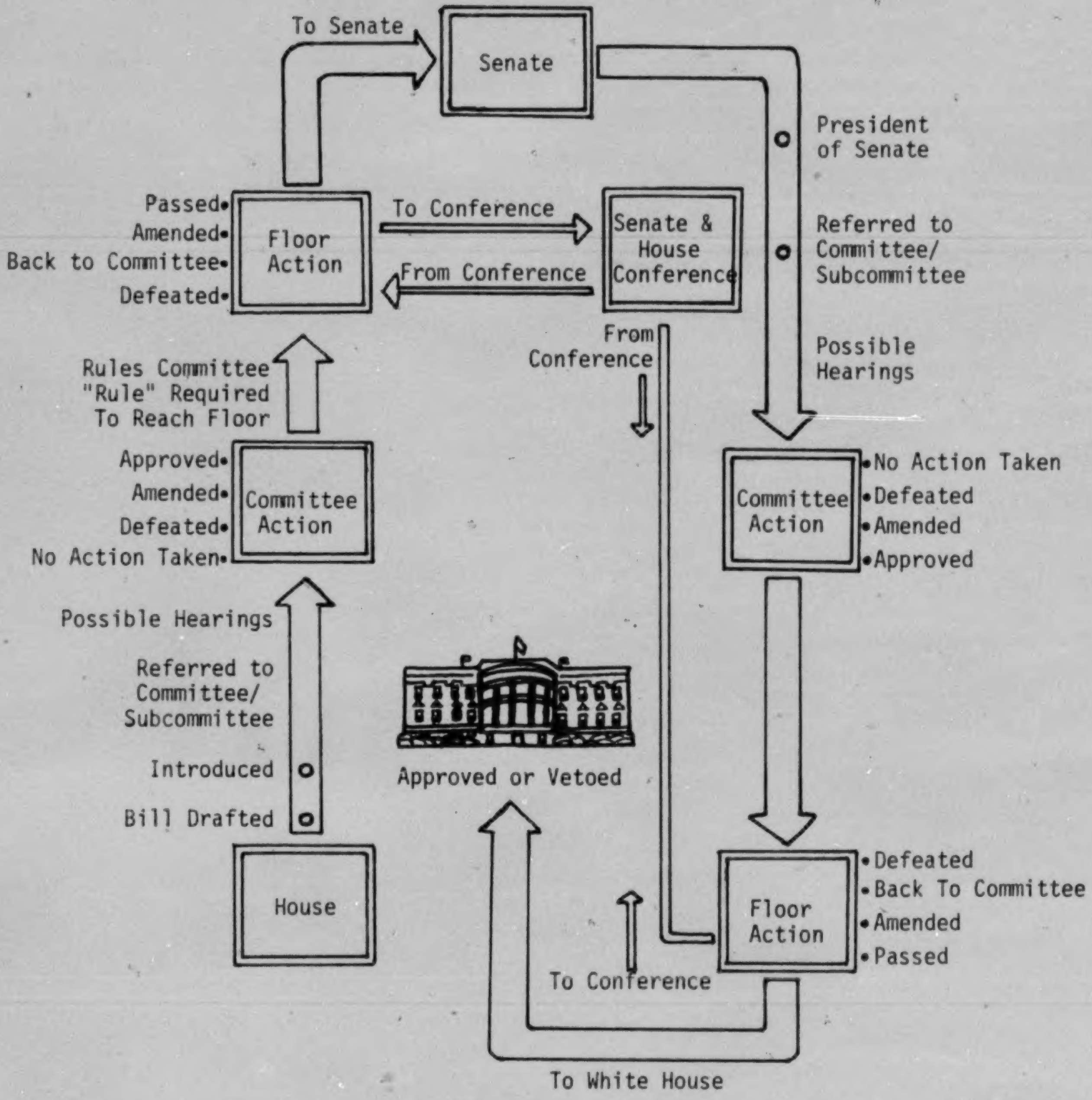
A. The administrative bodies are an extension of either the legislative branch or the executive branch. For example: the Department of Transportation and the Internal Revenue Service.

B. They promulgate regulations that interpret and apply the statute or directive they are empowered to enforce. The regulations are often much more voluminous than the statute. For example:

The Internal Revenue Code versus the Internal Revenue Service regulations.

C. Administrative bodies hold hearings of a judicial nature. For example:

1. Public Service Commission — state level.
2. Internal Revenue Service — federal level.


To Senate
Senate
President of Senate
Referred to Committee/ Subcommittee
Possible Hearings
Passed
Amended
Back to Committee
Defeated
Floor Action
To Conference
From Conference
Senate & House Conference
From Conference
Rules Committee "Rule" Required To Reach Floor
Approved
Amended
Defeated
No Action Taken
Committee Action
No Action Taken
Defeated
Amended
Approved
Committee Action
Possible Hearings
Referred to Committee/ Subcommittee
Introduced
Bill Drafted
House
Approved or Vetoed
Floor Action
Defeated
Back To Committee
Amended
Passed
To Conference
To White House

D. The administrative bodies are probably only second to the executive branch in ability to react to changing conditions.

E. Examples of the effect that administrative bodies can have on citizens.

1. Actions of the Civil Aeronautics Board have changed many air travel habits. Their regulations have been instrumental in the disappearance of family fares and the popularity of charter flights.

2. The Department of Transportation has had a substantial effect on automobile safety.

3. The Environmental Protection Agency has promulgated many regulations regarding emission control at the urging of citizens. These regulations have not been without controversy.

   a. The cost of the automobile has gone up.
   b. Engine performance has gone down.
   c. Gasoline consumption has gone up at a time when the availability of gasoline has gone down.

4. All of the above (1-3) lead to the question of: "How much regulation is necessary to accomplish the directive to the administrative body?"

V. THE JUDICIAL BRANCHES AS A SOURCE OF CHANGE IN THE LAW.

A. There are two methods by which courts can change law:

1. by deciding a case, or

2. by establishing new or revising old rules of procedure.

B. Case.

1. Decision of a case requires a controversy.

   a. The controversy can be between two individuals resulting in one filing a civil lawsuit, or
   b. The controversy can be between the community and an individual, as in a criminal action by the prosecuting attorney or U.S. attorney.

2. Once the trial court has made a decision, an appeal may be sought by one of the parties. The appeal will often bring out broad philosophical questions that may result in case law, interpretation of statutes, or may result in the voiding of a statute.

3. How effective the courts are as a source of change in the law depends upon whether the court views itself as active or passive.

4. Examples of law change through case decisions:

   a. Federal level —
      (1) abolition of the death penalty under certain broad criminal statutes.
      (2) redefinition of pornography.
      (3) refining of the rights to be afforded accused individuals at various points in criminal investigation, arrest and trial.
      (4) distinguishing between the rights of common citizens and politicians (or public persons) to sue for libel.
      (5) ending the court-created policy of separate-but-equal school segregation.
      (6) requiring busing to end de facto discrimination.
      (7) requiring representation by a lawyer for criminal defendants.
      (8) limiting governmental intrusion into the privacy of citizens in matters such as abortion, wiretapping, etc.
      (9) redefinition of what is meant by separation of church and state in terms of education.
   b. State level —
      (1) reevaluation of the landlord-tenant relationship, e.g., need a property be habitable?
      (2) refining of the liability of a manufacturer for his defective goods.
      (3) abolition of immunity of charity-owned hospitals for torts of their employees.

C. Rules of Procedure.

1. Changes of rules of procedure often bring about new remedies.

2. Changes of rules can expand the ability of an individual to sue.

3. Examples:

   a. Establishment of broad rules relating to who may be joined in a class action brought about a substantial increase in lawsuits against large corporations. (Later decisions have contracted the broad interpretation.)

   b. Adoption of the proposed Federal Rules of Evidence will change the trial of cases substantially.

VI. THE PEOPLE.

A. The people are the source of one amendment process to the state and federal constitutions.

B. The people can get proposed legislation on the state ballot by the petition process.

VII. INTERACTION BETWEEN THE VARIOUS SOURCES OF LAW.

A. Passage of a statute by a legislature often leads to establishment of regulations and enforcement by an administrative body. The courts may then review the actions of the administrative body because of the appeal from a citizen who has come under the aegis of the administrative body. This may, in turn, cause the legislature to change the original legislation.

B. A case study.

1. Facts: In the early days of the Republic, charitable organizations were given immunity from tort liability for the negligence of their employees by the courts. Charitable hospitals were the organizations that most benefited from this court-made doctrine. If one of their employees injured an individual, they could not be sued. This was a time of few public medical institutions.

   The courts based their reasoning on one or more of the following reasons:

   a. *Trust fund theory:* Fundamentally, this theory considers that the funds of a charity make up a trust and that payment of tort claims divert these funds from the charitable purposes. The use of funds to satisfy tort claims would impair the usefulness of the charity by depleting its assets and, therefore, defeating its charitable purpose. J. Horty, *The Status of the Doctrine of Charitable Immunity in Hospital Cases*, 25 Ohio St. L. J. 343 (1964).
   b. *Implied waiver theory:* This theory was that a beneficiary of a charity assumes the risk of negligence and the beneficiary's receipt of services implies a waiver of the right to recover.
   c. *Respondiat-Superior-Not-Applicable-To-Charities Theory:* Because the doctrine of respondiat-superior is based on the use of servants to make a profit for the master and since charities do not seek profits, the respondiat-superior should not apply and charities should not be held responsible for the negligence of their employees.
   d. *Public policy theory:* Charities need protection to ensure their survival.

      As time passed, charities became stronger financially, insurance became available to protect against injuries and people began to ask why the hospitals should be immune from suit.

2. Questions: (discussion questions) If immunity is given in your state,

   a. Should immunity be continued?
   b. If not, who should be the source of the change?
   c. If you believe that it should be continued and the court discontinues it, what source would you use to return immunity as the rule?

3. Answers:

   a. 2a is a policy question. It can only be answered by public consensus.
   b. The best way to answer 2b and 2c is by example:
      (1) In Rhode Island, the Rhode Island Supreme Court was the source of change. In 1879, they decided that immunity should no longer be extended to charity-owned hospitals. Glavin v. Rhode Island Hospital, 12 R.I. 411 (1879).

      However, in 1896, the Rhode Island Legislature reinstated the doctrine by statute in the belief that charities still needed protection. After a long period of time, the Rhode Island Legislature changed its belief and repealed that statute. R.I.P.L. 1968 Ch. 43 sl.

(2) The Missouri Supreme Court was of the opinion that the legislature should be the source of change in the long-standing court-made doctrine of charitable immunity. Schulte v. Missionaries of La Salette Corporation of Missouri, 352 S.W. 2d 636, 643 (1961).

However, after the legislature failed to even consider any change in the law that the court felt was anachronistic, the Missouri Supreme Court changed it. Abernathy v. Sisters of St. Mary's, 446 S.W. 2d 599 (1969).

III. HOW THE LAW WORKS

GOAL: This chapter is designed to explain the operation and strengths and weaknesses of the adversary system as a truth-seeking mechanism.

I. *One idea emphasized in the first chapter was that the need for a system of law and its sophistication depends upon population size and the complexity of the society.*

II. *Chapter One also explained the role of law as a means of review, the role of law is:*

A. To influence conduct to provide for the safety, protection, and personal freedom of the individual. For example:

1. Everyone drives on the right side of the road.

2. When a waiter serves you breakfast at a restaurant, he doesn't expect to have to go to the Supreme Court to collect for it from you.

B. To facilitate the operation of business and commerce.

C. To provide a systematic and reasoned solution for social conflicts.

1. Why systematic?

a. So everyone knows where to go to seek relief, where and how to make complaints.
b. For uniformity of result — following the same procedures results in consistency?

2. Why reasoned?

a. For uniformity of result.
b. To instill confidence in the system and the law. People need to know the reasons for judicial decisions.

3. What is a "social conflict"?

It can concern negligence, a contract or any number of conflicts between two persons (one of which could be a corporation) or between a person and the government involving either a crime or one of the above-mentioned disputes.

III. THE ADVERSARY SYSTEM.

A. This is the "system" we use in the United States for providing a systematic and reasoned way to solve social conflicts. Each side to a conflict presents the arguments in its favor to an impartial judge and/or jury who settles the conflict.

B. Initiation of a suit in the system.

1. In the civil cases, an injured *individual* must bring a suit to initiate the suit in most cases.

a. Just because someone files a suit does not mean he has a good case.
b. A person with a frivolous case may have trouble getting a lawyer.
c. Why get a lawyer at all?
(1) In the quest for uniformity and fairness, very complex procedures for filing, presenting and appealing suits have developed.
(2) Lawyers are skilled in collecting facts and presenting them in the best light, i.e., in a way that will persuade the fact finder.
d. Sometimes, the government will bring suit for an injured person. For example:
(1) anti-trust suit
(2) civil rights cases

2. In criminal cases a complaint by an individual, information by the prosecutor or indictment by a grand jury initiates the system.

C. Burdens on litigant to overcome opponent.

1. Burden of proof.

Filing suit is not enough. Like a debate, one must bring in *convincing facts* to prove what one alleges. One must bring in **"enough"** evidence so that reasonable men can find in his favor. This has to do with the **quantity** of evidence.

2. Burden of persuasion. This has to do with the **quality** of the evidence.

3. How does the jury decide who has fulfilled the burden?

a. Civil cases.
(1) Before, Missouri juries were instructed to find in favor of the plaintiff if he proved his case "by the preponderance of the evidence".
(2) Today jury instructed to find in favor of plaintiff if he "causes them to believe".
b. Criminal cases — "beyond a reasonable doubt".
c. Unanimous verdict necessary for criminal cases. Majority for civil cases.

D. The role of the jury.

1. To decide the facts, i.e., what the truth is.

2. To apply to the given situation the law as outlined by the judge in the instructions to the jury. Missouri now has uniform instructions in both criminal and civil cases to help insure uniformity of result.
3. In Missouri and a few other states, the jury sets the sentence in criminal cases.

E. What are the weaknesses of the system?

1. Judge's bias.
    a. They try not to be, but some are.
    b. There are safeguards, e.g., change of venue.
2. Jury bias.
    a. Voir dire weeds most out. What kinds of questions would accomplish this?
    b. Lawyers take into account possible biases in the way they present the facts. However, this is not to say that they would attempt to fool the jury or misrepresent facts.
3. Court congestion.
    a. In most circuits in Missouri there is no congestion.
    b. Some problems exist where circuits have not been adjusted to reflect population shifts.
    c. Delay is sometimes caused by lawyers using all of the procedures to the advantage of his client. This is often necessary to prepare a case that presents the client's position in the best light.
    d. What is judicial economy? Lawyers and jurists would rather have a slow and just process than a speedy unjust one.
4. Spasmodic development of law.
    a. Courts can only decide the cases brought before them. They cannot seek out inequities in society and right them on their own.
    b. The legislature is the place where changes of law should be made to deal with problems that are "likely to come up".
    c. It took many years before a someone appealed to the Supreme Court because he wasn't provided with an attorney to represent him in a felony prosecution.
5. Accessibility to the courts.
    a. Some say courts are not accessible to everyone.
    b. With legal aid for the indigent those who are poor can get help.
    c. There is a movement in the insurance industry toward legal insurance not unlike Blue Cross medical insurance.
    d. Some unions are attempting to get legal insurance as a fringe benefit.
    e. All these attempts to overcome the problem have the general approval of lawyers with the caveat that no restriction be made on **WHO** the individual selects as his

lawyer. The basis of the caveat is the personal nature of the attorney-client relationship.

IV. THE DIFFERENCE BETWEEN THE CRIMINAL LAW AND CIVIL LAW.

A. Criminal law.

1. Crimes are defined in statutory law for the most part.

    a. We first define what is a criminal act.
    b. Must be **specific** enough so that a person will understand that if he does a certain act, he is committing a crime.
    c. Must balance a person's constitutional rights against the welfare of society to see if the statute is constitutional.

2. Enforcement.

    a. Investigation and apprehension is carried out by police, FBI, etc.
    b. **Not** a judicial function. The judicial branch is an arbiter not law enforcement organization.
    c. These organizations must balance public's interest in apprehension vs. individual's rights not to be wrongfully detained, falsely changed, etc.

3. Prosecution.

    a. Prosecuting attorney directs prosecution.
    b. Presents the states case at arraignment and at hearings for the setting of bail.
    c. Preliminary hearing.
    d. Possible plea negotiation.
        (1) Prosecutor and defense lawyer separately weigh their evidence and predict what is likely to happen if the case goes to a jury.
        (2) Then each try to negotiate toward a position that would be at least as good as they predict would result if they went to the jury.
    d. Trial.
    e. Appeal
4. Sentencing.

    a. Should the jury do the sentencing?
    b. Should the judge?
    c. In Missouri, as in only a few other jurisdictions, sentencing is done by juries.
        (1) Where there is a guilty plea or if the jury can't agree, then the judge will set the sentence.
        (2) If the judge sets the sentence, he may hold a pre-sentence hearing to find out more about the convicted person's past, etc.

5. Post-conviction remedies. These are legal pleadings which may follow conviction and all appeals.

B. Civil law.

1. It may involve disputes concerning:
    a. contracts.
    b. negligence.
    c. intentional torts.
    d. products liability.
    e. property.

2. Procedure.
    a. Preparation before filing suit.
        (1) Examination of client.
        (2) Investigation.
    b. Filing the suit.
        (1) Selection of venue.
        (2) Selection of the parties.
        (3) Allegations of the petition.
        (4) Answer.
    c. Motions.
    d. Discovery.
        (1) Depositions.
        (2) Interrogatories.
        (3) Production of documents.
        (4) Admissions.
        (5) Physical and mental examination.
        (6) Enforcement of discovery.
    e. Preparation for trial.
        (1) Trial brief.
        (2) Review of elements of case with client.
        (3) Review of testimony with witnesses.
        (4) Subpoena witnesses.
    f. Trial.
        (1) Selection of jury.
        (2) Openings statements.
        (3) Evidence.
            (a) Examination.
            (b) Cross-examination.
        (4) Closing argument.
        (5) Jury verdict.

IV. THE COURT SYSTEM

GOAL: This chapter is designed to show the jurisdiction and hierarchal position of the courts in the state and federal court system.

I. INTRODUCTION.

A. The purpose of a court is to find the truth. In this quest, the judge acts as referee to see that:

1. certain procedures are followed.
2. the rule of law is followed.

B. Hierarchy of the Court System.

1. The United States court system is like two halves of a pyramid built side by side with a space between. The two halves are made up of courts in two independent but related series, one ruling on state laws, the other ruling on federal laws with some overlapping. State courts under Article VII of the United States Constitution are compelled to uphold the federal constitution, statutes, and treaties as the supreme law of the land over conflicting state constitutions and statutes.

2. The Supreme Court is the capstone of these two halves.

C. Jurisdiction, in general.

1. The power of a court is increased as you proceed up the pyramid.

2. What is jurisdiction? There are two kinds:

   a. personal — Does the court have jurisdiction over the individuals before the court?
   b. subject matter — Does the court have the power to deal with the kind of action or answer the legal question posed in the action?

3. Without both of these kinds of jurisdiction, the court has no authority to render a judgment in the controversy.

II. CURRENT STRUCTURE OF MISSOURI COURTS. (Art. V, Mo. Const.)

A. Inferior courts.

1. Municipal corporation courts and police courts.

   a. These are the lowest courts in the state pyramid. They are created by the city.
   b. They have subject matter jurisdiction over violations of municipal ordinances only. Hence, their jurisdiction is limited. They have personal jurisdiction over anyone who violates ordinances within the boundaries of the municipality and is subject to process.
      (1) They deal with ordinances that cover such subjects as zoning, animal control, keeping the peace, gambling and liquor, etc.
      (2) The main work of the municipal court is the handling of violations of municipal traffic ordinances.
   c. They are not courts of record. By this is meant transcripts are not made of the trial.

2. Magistrate courts.

   a. These also occupy the base of the state pyramid.
   b. In counties of 30,000 population or less, the magistrate and probate judges are one and the same person. Counties of between 30,000 and 70,000 population have one magistrate judge. As population increases more judges are added.
   c. Magistrate courts have subject matter jurisdiction in civil cases involving $2,000 or less, in general. But, this may vary with the size of the county. For example, in St. Louis County, the jurisdictional limit is $3,000. They also have concurrent subject matter jurisdiction with the circuit courts in all misdemeanor violations of state statutes, except in the city of St. Louis in which the St. Louis Court of Criminal Corrections has exclusive jurisdiction in criminal cases.
   d. Around 85 percent of the people who come into contact with the judicial system do so at the magistrate or municipal level.

3. Probate courts.

   a. These courts are on the same level as the magistrate court in the state court pyramid.
   b. There is one probate court for each county and one for the City of St. Louis.
   c. The jurisdiction of the probate court is stated in RSMo. 481.20. The probate court:
      (1) "protects the rights of one's heirs and assures the orderly transfer of the deceased's property after his death, either in accordance with his wishes if he left a Will, or by law if he died without having made a Will."
      (2) "protects the rights of the deceased's creditors, corporate or individuals."
      (3) "allows the estate to conveniently collect any debts that might have been owing to the deceased at the time of his death."
      (4) "guarantees the collection of any taxes which might be due by reason of the transfer of the decedent's property."

(5) "establishes clear title to any real estate which the deceased might have owned at the time of his death."
(6) "makes certain that the rights of the deceased's widow are protected — or at least that she is made aware of the existence of those rights."
(7) "supervises estates of minors and those whom the Court finds to be mentally incompetent."

d. They are courts of record.

4. Magistrate-Probate Courts.

In the less populous counties of the state, the magistrate and probate courts are combined, i.e., one man serves as judge of both courts.

5. St. Louis Court of Criminal Correction.

According to RSMo. 479.100: "The court shall have exclusive original jurisdiction of all misdemeanors under the laws of the state committed in St. Louis city, the punishment whereof is by fine or by imprisonment in the county jail, or both, or by forfeiture. The court shall have concurrent jurisdiction with the city police court of the city of St. Louis of all offenses which may be declared to be misdemeanors under any law of the state, and which may also be in violation of any ordinance of the city of St. Louis; but any action pending or which has been decided in either of said courts may be pleaded in bar or abatement, as the case may be, to a prosecution in the other of said courts for the same offense, with the like effect as if said prosecution were pending in the same court, or had been decided in the same court. This law shall not be construed to give to said city police court jurisdiction of any prosecution for a misdemeanor instituted in the name of the state of Missouri."

B. Superior courts.

1. Circuit courts — Juvenile courts.

a. This court has general jurisdiction in both criminal and civil matters.
b. It is a court of record.
c. It retries cases previously tried in the magistrate and municipal courts in which one of the parties has filed for a trial "de novo".
d. It also decides appeals from the probate court.
e. The geographical area covered by the circuit courts vary. At present, there are 43 circuits in the state (RSMo 478.073). Circuits are composed of one to five counties. The larger circuits in terms of population operate in divisions. For example, the Circuit Court of St. Louis has 22 judges and operates in several divisions. Each division may handle different matters. For example, one may only hear domestic relations (divorce, etc.) controversies and another criminal actions.
f. The juvenile court is a division of the circuit court. In counties where the case load does not merit a separately operated court, the circuit court judge simply changes hats to hear juvenile matters.
g. The court has concurrent jurisdiction with the magistrate court and exclusive jurisdiction in criminal cases involving felonies under state statutes.

2. Hannibal Court of Common Pleas. Jurisdiction:

The Hannibal Court of Common Pleas has within the limits of Mason and Miller townships of Marion County exclusive original jurisdiction in all civil actions. It also has exclusive original jurisdiction in all criminal actions within those townships that any other circuit court in the state would have. In the case where the plaintiff is a resident of Marion County but not within the two above-mentioned townships and the defendant is a resident of one of those townships, the defendant cannot be sued in the circuit court. Where the plaintiff is a resident of one of those two townships and the defendant lives within Marion County but not in one of those two townships, the defendant cannot be sued in the Hannibal Court of Common Pleas. Where there are more than one defendants and some reside within the two townships and some reside within Marion County but outside the two townships, then suit can be brought in either court.

3. Cape Girardeau Court of Common Pleas. Jurisdiction:

The Cape Girardeau Court of Common Pleas has powers and jurisdiction within the city, township and county of Cape Girardeau as follows:
(1) Concurrent original jurisdiction in all civil actions at law or in equity with the circuit court of said county, and concurrent jurisdiction with the circuit court of said county in the treatment, correction and confinement of delinquent minors;
(2) A concurrent superintending control with said circuit court over magistrates in all civil cases in said county of Cape Girardeau, and exclusive jurisdiction in appeals in all cases tried before the recorder or police judge of the city of Cape Girardeau, and in all civil cases tried before magistrates within said city and township of Cape Girardeau;
(3) Concurrent jurisdiction with said circuit court in appeals in all civil cases tried before magistrates in all townships throughout said county other than said township of Cape Girardeau.

C. Appellate Courts.

1. Court of appeals.

a. It decides appeals coming from the circuit courts.
b. It has general appellate jurisdiction over all cases other than those over which the Supreme Court has mandatory jurisdiction.
c. The state is divided into three districts in which the court of appeals sit. They are St. Louis, Kansas City, and Springfield.

2. State Supreme Court.

a. This is the highest court in the state pyramid.
b. According to Article V, Section 3 of the Missouri Constitution of 1945 as amended effective August 4, 1970:

"The Supreme Court shall have exclusive appellate jurisdiction in all cases involving the construction of the Constitution of the United States or of this state, the validity of a treaty or statute of the United States, or any authority exercised under the laws of the United States, the construction of the revenue laws of this state, the title to any office under this state, in all appeals involving offenses punishable by a sentence of death or life imprisonment, and in other classes of cases provided by Supreme Court rule unless otherwise changed by law . . . ."

(1) As respects "appeals involving offenses punishable by a sentence of death or life imprisonment, the Supreme Court held in Parks v. State, 492 S.W. 2d 746 (1973), that murder in the first degree is not an offense punishable by life or death **in the alternative** in view of the Supreme Court (U.S.) abolition of the death penalty and hence was not within their appellate jurisdiction. The result of the holding in the Parks case, is that the Supreme Court of Missouri has effectively transferred appellate review of all criminal cases to the Missouri Court of Appeals.

(2) As respects the Missouri Constitution, the Missouri Supreme Court is the final interpreter of it.

c. There are seven justices on the Missouri Supreme Court. They sit in two divisions.

d. The Missouri Constitution provides that the Supreme Court has responsibility for managing the whole state judicial system. Art. V. 34 Mo. Const. of 1945.

(1) Under its authority in the Constitution, it may assign judges back and forth as they are needed. Art. V. Section 6 Mo. Const. of 1945. This power is usually exercised to ease overloaded dockets.

(2) It also has the right under the Constitution to establish rules of practice and procedures. Art. V. Section 5 Mo. Const. of 1945.
  (a) e.g., Missouri Approved Instructions.
  (b) e.g., Missouri Approved Criminal Instructions.
  (c) e.g., Rules of Discovery.

(3) The Supreme Court also superintends lawyers, judges, the government of the bar, admissions to the bar and non-resident lawyer practice.

D. County Courts — What are they?

1. They are NOT part of the judicial branch. Rather, they are elected officials who act in a business management capacity. They decide how the country's money is to be spent.

2. The name "court" and title of "judges" is a historical anachronism hearkening back to the days when Missouri was a territory and county courts handled probate matters in addition to their management duties.

E. Administrative agencies.

1. The administrative agencies are not really a part of the court system. However, they do perform a judicial function.

2. These agencies administer programs and develop regulations as set out in laws.

3. They may hold hearings to make findings of fact and apply the law and their regulations.

4. The administrative agencies are subject to judicial review in the court of appeals.

5. There is a like system of administrative agencies in the federal government. They are likewise subject to judicial review.

III. THE NON-PARTISAN COURT PLAN.

A. Not all judges are elected by the electorate.

1. Some are appointed by the governor from a panel of three persons selected by a non-partisan judicial commission.

2. Then after 12 months they run in an election on their record to see if the people wish for them to be retained in office.

3. The courts subject to the plan:

   a. Supreme Court.
   b. Court of Appeals.
   c. Circuit and Probate judges in St. Louis, Jackson County and St. Louis County.
   d. St. Louis Court of Criminal Corrections.

B. The non-partisan court plan allows the judiciary to be more independent and theoretically more apolitical.

IV. THE FEDERAL COURTS.

A. United States District Courts.

1. In Missouri, we have two districts — Eastern and Western.

2. These are federal courts of general jurisdiction.

3. The United States Judicial Code provides subject matter jurisdiction for actions:

   a. arising out of federal questions pertaining to the Constitution or statutes or treaties of the United States where the amount involved is more than $10,000 exclusive of interest. 28 U.S.C.A. Sec. 1331.
   b. arising between citizens of different states where the amount in controversy exceeds $10,000. 28 U.S.C.A. Sec. 1332.
   c. bankruptcy, admiralty, anti-trust, patent actions, etc. 28 U.S.C.A. Sec. 1333-58.

B. United States Circuit Courts of Appeal (28 U.S.C.A. Sec. 42 et seq.)

1. There are eleven United States Circuit Courts — one for the District of Columbia and ten others which include from three to ten states and territories.

2. Number of judges ranges from three (1st Circuit) to 13 (9th Circuit).

3. Where more than three, the court sits in divisions of three judges. Each division has a chief judge who has authority to assign district judges to sit in with the circuit court if needed.

4. Missouri is in the 8th Circuit.

   a. There are eight judges in the circuit.
   b. Missouri, Arkansas, Iowa, Minnesota, Nebraska, North Dakota and South Dakota are covered by the 8th Circuit.

5. The United States Circuit Court reviews appeals from the U.S. District Court, most all appeals from federal administrative agencies. E.g., if application for a license for a TV station is denied by the F.C.C. and the right to administrative review is exhausted, an appeal can be made to the U.S. Circuit Court of Appeals.

C. United States Supreme Court.

1. It is the highest court in the federal pyramid and stands above the state supreme court at the top.

2. The Supreme Court is comprised of a Chief Justice and eight associate justices.

3. The basis for the jurisdiction of the Supreme Court is found in Article III of the U. S. Constitution and 28 U.S.C.A. Sec. 1251..

   a. It has original and exclusive jurisdiction over controversies between two or more states and actions against ambassadors or public ministers of foreign states or their domestics. Only the Supreme Court may try these cases.
   b. It has original and concurrent jurisdiction over actions brought by ambassadors, etc., controversies between the United States and a state and all actions by a state against a citizen of another state. Thus, the Supreme Court shares jurisdiction over these matters.

4. Certain appeals can go to the U. S. Supreme Court as a matter of right (28 U.S.C.A. Sec.. 1257):

   a. e.g., where a federal statute is found invalid in a state court.
   b. where state statute is upheld as valid but losing party asserts it is repugnant to the U. S. Constitution or federal statutes.

5. Most review is sought on writ of certiorari (28 U.S.C.A. Sec. 1257):

   a. e.g., where U. S. statute is upheld as valid and losing party asserts it is repugnant to the Constitution.
   b. e.g., where review sought of specialized federal court decisions, e.g., Court of

Claims and Court of Customs and Patent Appeals.

6. In the 1971-72 term of the U. S. Supreme Court it had 2,142 cases. Of these, 1752 were disposed of by denial of a writ of certiorari and 137 by dismissal or a one-line memorandum decision. Of the remaining 260 cases, 39 came from district courts, 3 from specialized federal courts, 98 from the U. S. Circuit Court of Appeals and 119 from the state courts.

IV. CASE STUDIES. (Set out below are hypothetical cases that exemplify cases that could be brought in the courts covered in the lecture.)

A. A lives in Cape Girardeau and contracts with B Building Company who has a branch office in Cape Girardeau and whose main office is in Nashville, Tennessee. A wants to sue B Building Company for $5,000 because they failed to perform their contract.

1. Which court should A file suit in?

2. Would it make any difference if A lives in Hannibal? Your town?

B. A was a Professor at Warrensburg State College. On retirement, he bought a cottage in Florida. A maintained his Missouri home in Warrensburg, and spent the spring, summer and fall in Missouri. A died in Florida.

1. What court will settle A's estate?

2. In which state, Florida or Missouri or both?

C. A, a pop music enthusiast and budding financial genius, decided to undertake the production of a tremendous "Rock Festival" in the memory of the late Janice Joplin. A resides in Pettis County, Missouri. He has rented Sunnydale Farms in Sedalia for the occasion, signed contracts with several talented popular musical groups, incurred advertising expenses, and sold over $30,000 worth of tickets. With the date of the concert less than three weeks away, a group of concerned citizens of Pettis County hope to take judicial action to stop the "Rock Festival".

1. What steps should they take?

2. What court do you recommend for the suit?

3. What kind of relief should they seek?

D. A is 15 years old, and lives in Jefferson City, Missouri. His friend, B, is 16 years old and lives in the next block. A and B are going to YMCA Camp in Estes Park, Colorado for the summer. B's father was driving the boys to camp, and in Kansas had a car wreck with a Greyhound Bus owned by a Delaware Corporation, driven by C, who lived in Kansas City, Missouri. A is badly hurt and is brought back to Jefferson City, Missouri to Still Hospital for treatment. His hospital and Doctor's expense exceed $10,000.

1. Can A sue C?

2. Can A sue Greyhound Corporation of Delaware?

3. Can A sue B's father?

4. Can A sue B?

5. Can A sue C and Greyhound? C, Greyhound and B's father?

6. Can A sue in his own name?

7. Can A sue in Kansas State Court? In Missouri State Court? In U. S. District Court in Kansas? In U. S. District Court in Missouri?

8. What law applies? Missouri? Kansas? Colorado?

E. Bill S., 22, is finishing his Master's Degree in education at the University of Missouri at Columbia, Missouri. The prosecuting attorney of Boone County files against him a ciminal information alleging Bill S. shot and killed Susie Q., another graduate student. Bill S. is arrested and confined to the County Jail.

1. Before what Court is Bill S. first brought?

2. If "bound over" for trial, what is the trial court?

3. If convicted by the trial court, to what court is his case appealable?

F. Kansas City had an ordinance prohibiting the operation of a gambling house. It also has an ordinance prohibiting the operation of a vehicle without a muffler. Joe J. owns a house in which is operated a continuous poker game, a roulette wheel, and a dice game. The police are notified and raid the premises. Joe J. flees the premises in his purple Cadillac, which does not have a muffler, and is caught by a patrolman. He is placed in the City Jail, and is charged with a violation of the two city ordinances. The State's attorney has been after Joe J. and files a state charge against him for operating a "house of chance".

1. What court has jurisdiction?

G. On October 28, 1972, B was found fatally stabbed on the floor of her apartment which had been burglarized and set afire. In their investigation of the crime, the police questioned A, a twelve year old, who had been in the apartment building that day visiting his grandfather. Later the police checked the police department where A. lived in St. Louis county. They found that A had previously been taken into custody for burglary, assault and arson. On October 31, 1972, St. Louis police went to A's home in St. Louis county and requested that A accompany them to St. Louis police headquarters to be interviewed for the purpose of obtaining information about the crime. After A gave inconsistent statements about his whereabouts at the time of the crime, he was given the Miranda warning, had to sign a waiver of his constitutional rights and took his statement.

(C. W. v. Murphy, 508 S.W. 2d 520 St. L. C. A. 1974)

1. Which court has jurisdiction?

2. Should the matter be settled in a St. Louis court or a St. Louis county court?

H. Billy B. is convicted under a Missouri Statute which his lawyer says is repugnant to provisions of the U. S. Constitution. The Missouri Supreme Court affirms the conviction and upholds the constitutionality of the Statute in question. Billy B. appeals to the United States Supreme Court. Is his appeal a matter or right? or is it discretionary?

V. MAJOR SUPREME COURT DECISIONS AND THEIR IMPACT ON U.S. HISTORY

GOAL: *This chapter is designed to show the role the Supreme Court plays as a co-equal branch of government, the power it wields as a public policymaker, and, the practical limitations on that power.*

I. INTRODUCTION.

A. Alex de Tocqueville said more than a century ago that, sooner or later, the major issues of American life become questions to be decided by the courts. This is as true, or more so, today as it was in Tocqueville's days.

B. The court which has the most impact on society in deciding those issues is the United States Supreme Court. Its judicial power has, for better or worse, become a major instrument in the formation of economic, social and political policy in the United States.

II. THE COURT AS A POLITICAL INSTITUTION.

A. The Supreme Court is a political institution. Not necessarily in the sense of political parties like the Republicans and Democrats; but in the sense of a co-equal branch of government.

1. In this the Supreme Court is different from the lower courts which are more involved in following precedent and dealing with the everyday problems of law. The Supreme Court establishes precedent.

2. One way to see the political nature of the Supreme Court is to look at a few decisions of the Court over the years.

B. Marbury v. Madison, 1 Cranch 137, 2 L.Ed. 60 (1803) — *The Supreme Court established itself as a power in government.*

1. **Historical background and facts:**

From the beginning, the United States was governed by the Federalists — the party of Washington and Adams. In opposition to the Federalists, grew up the party of Jefferson and Madison — the Republicans.

The Federalists were in favor of a strong national government and the friendship of England. The Republicans favored strong state governments and the friendship of France.

During John Adams's administration both the French and the Republicans bitterly attacked the Federalists and their ideals. In retaliation, the Federalist-controlled Congress passed the Sedition Act of 1798. The Federalists used this Act to jail any opposition. The expiration date of the Act coincided with the expiration date of Adams's term, March 3, 1801.

In the 1800 election, Jefferson was elected President and the Republicans took control of Congress. The Federalists looked to the judiciary to preserve a strong national government and the Constitution. Two judges on the, Supreme Court resigned. The Federalist-controlled lame-duck Congress then reduced the number of Supreme Court judges to five, abolished their duty to ride circuit and established 16 new circuit courts and 42 new justices of the peace courts for the District of Columbia. Adams immediately began making judicial appointments. The Congress confirmed and sent the appointments to Secretary of State John Marshall for delivery to the appointees. Marshall, himself the Adams's appointee for the Supreme Court chief justiceship, failed to deliver some of the appointments before Jefferson took office on March 4, 1801.

Jefferson's Secretary of State, Madison, refused to deliver the undelivered appointments. William Marbury brought an action for a writ of mandamus in the Supreme Court in December, 1801, seeking to compel Madison to deliver his appointment to justice-of-the-peace.

In the face of threats of impeachment, Chief Justice John Marshall and the Federalist Supreme Court agreed to hear the case. The new Republican-controlled Congress reacted by passing a law halting the meeting of the Court for 14 months. In 1802, the Republicans repealed the Judiciary Act that created the new courts.

When finally allowed to meet again in 1803, the court took up Marbury's case. The dilemma of political and historical import was this:

If the Court ordered Madison to deliver Marbury's appointment, Madison could refuse and the Court would be powerless to enforce its own order. The executive branch enforces orders of the Court. Also, the Republican-controlled Congress would likely impeach the justices. The result would be that the Supreme Court would become a dead branch of government subject to the shifting winds of Congress's political ideology.

2. **The issues and decision:**

Marshall overcame that dilemma and at the same time established the Court as potentially the most powerful branch of government. He boiled the case down to three issues:

a. Did Marbury have a right to his commission under the law? Yes.
b. Is a writ of mandamus the correct remedy? Yes.
c. Could the Supreme Court issue the writ? No.

Congress had given the Court the authority to issue the writ in the Judiciary Act of 1789. But, Marshall in his opinion said that the Constitution defined what the **original** jurisdiction of the Court would be and Congress could not change that by statute. Hence, Marshall established two principles:

a. The Constitution is the Supreme Law of the land and no laws can be enacted which are repugnant to it.
b. The Supreme Court is the final interpreter of the Constitution and decides whether laws are repugnant to the Constitution.

C. McCulloch v. Maryland, 17 U.S. 316, 4 L.Ed. 579 (1819) — *The Court establishes the federal government's superiority over state governments.*

1. **Historical background and facts:**

During the first two decades of the 19th century, state-chartered banks, towns, private banks, businesses, and even counterfeiters issued notes. These were not "legal tender" like the dollars we have today. Consequently, few were accepted at face value. A debt paid with one of these notes worth ten dollars face value may have been accepted for only five if that was all the creditor was willing to give for it.

In 1816, the U. S. Congress chartered the second bank of the United States to establish a sound federal currency redeemable for gold or silver and act as a depository for federal funds. The act chartering the bank was passed over strenuous political opposition. The federal government owned one-fifth of the stock in the bank and selected one-fifth of the directors. The private investors, who owned the rest of the stock and elected the rest of the directors, mismanaged the bank. The branch offices of the bank, particularly in the Southwestern United States, overextended credits then drastically curtailed them. In 1818, the home office of the bank ordered the branch banks to call in all loans accepting payment only in gold, silver, or the banks' own notes. This contributed in part to the failure of many state-chartered banks. Many people were ruined financially.

As a result, a number of states sought to exclude the bank from operating branches within their borders, either by imposing heavy discriminatory taxes against them, or by state constitutional provisions prohibiting the operation of any bank not chartered to do business in the state. Tennessee and Ohio imposed taxes of $50,000 on non-state-chartered banks; Kentucky $60,000. These taxes almost always applied only to the Bank of the United States.

Maryland passed a law imposing a tax of 2 percent on all notes issued by a non-state-chartered bank. An annual payment of $15,000 would relieve such a bank of its tax liability.

The bank refused to pay the tax and the State of Maryland sued a branch bank's cashier, McCulloch.

2. **The issues and decision:**

After losing in the state court, McCulloch appealed to the Supreme Court. The case was argued by six counsel over nine days. Daniel Webster was among those that defended the bank and McCulloch. He argued that the power to tax was the power to destroy. If the states could tax the federal government then they could destroy it at will.

Maryland's attorney general argued that there was no provision in the Constitution for the creation of a national bank. And, since the federal government was limited to the specific powers set out in the Constitution, the establishing of a bank was unconstitutional.

The opinion of the Court was handed down only three days after the arguments were completed. Chief Justice Marshall said in part:

> "Although among the enumerated powers of government, we do not find the word 'bank', or 'incorporation', we find the great powers to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies and navies . . . To its enumeration of powers is added that of making all laws which shall be necessary and proper, for carrying into execution the foregoing powers, and all other powers vested by this Constitution . . . We find, then on just theory, a total failure of this original right to tax the means employed by the government of the Union, for the execution of its powers."

Thus, the Court ruled for the first time that "implied powers" in the Constitution enable Congress to enact laws "on which the welfare of the nation essentially depends". McCulloch v. Maryland established:

a. the federal power over the states,
b. the broad parameters of the Constitution, and
c. the federal government's enduring qualities with regard to states' rights.

D. Brown v. Maryland, 25 U.S. (12 Wheaton) 419, 6 L.Ed. 678 (1827) — *The Court gives broad interpretation to the commerce clause, further enhancing the power of the federal government over the states and also over our everyday lives.*

1 **Background and facts:**

Brown was convicted in state court for violating a Maryland statute requiring all importers and wholesalers of foreign articles to secure a $50 license. The Maryland Court of Appeals affirmed. Brown appealed to the Supreme Court.

2. **Issues and decision:**

The issue is the extent of the Constitutional provisions prohibiting the states to "lay any imposts or duties on imports or exports." Chief Justice Marshall delivered the opinion of the Court, saying in part:

a. "There is no difference, in effect, between a power to prohibit the sale of an article, and a power to prohibit its introduction into the country."
b. The whole power of laying duties on imports was, with the exception of that necessary for inspection, taken from the states in the Constitution.
c. "Any charge on the introduction and incorporation of the articles into and with the mass of property in the country must be hostile to the power given to Congress to regulate commerce, since an essential part of that regulation, and principal object of it, is, to prescribe the regular means for accomplishing that introduction and incorporation . . ."

What this decision holds is that the regulation of foreign commerce is the exclusive province of the federal government and no state can pass a law that significantly interferes with that power. This decision gave the federal government the exclusive power that has made the United States a world trade power.

An obiter dictum in the case was that the principles of the case apply equally to importations from a sister state. This marked the beginning of federal regulation of interstate commerce which is the basis for far-reaching federal legislation, often regardless of its subject matter, today.

E. Ex Parte McCardle, 74 U.S. (7 Wall.) 506, 19 L.Ed. 264 (1869) — *The Achilles heel of the Supreme Court's political power.*

1. **Facts and historical background:**

On February 5, 1867, Congress empowered federal district courts to grant writs of habeas corpus to persons restrained in violation of the Constitution, a treaty, or federal law. Appeal from the holding in a habeas corpus action could be taken to the Circuit Court and then to the Supreme Court.

McCardle was imprisoned by the military government of Mississippi under the Reconstruction Acts for publishing "incendiary and libelous" articles, "alleging unlawful restraint by military force". McCardle sought habeas corpus. It was denied and he appealed to the Supreme Court. After they had heard the arguments but before they rendered a decision, the Congress passed an act repealing that part of the law that allowed the Supreme Court to hear appeals in habeas corpus.

2. **Issues and decision:**

   a. Could the Congress limit the jurisdiction of the Supreme Court on **appeals**? Yes.
   b. Could the Supreme Court still hear McCardie's appeal? No, they had to dismiss it.

   Chief Justice Chase said in part:

   > "It is quite true . . . that the appellate jurisdiction of this Court is not derived from acts of Congress. It is, strictly speaking, conferred by the Constitution. But it is conferred with such exceptions and under such regulations as Congress shall make."

3. Very few cases are brought in the Supreme Court under its original jurisdiction from Article II of the Constitution, e.g., citizen versus ambassador. Thus, the Congress can limit to the point of extinction the power of the Supreme Court as a social policy-making body. Consequently, the Supreme Court is not going to declare too many acts of Congress unconstitutional for fear of retaliation. Such retaliation has been attempted from time to time.

III. THE SUPREME COURT AS A PUBLIC POLICYMAKER.

A. Dred Scott v. Sanford, 60 U.S. (19 How.) 393, 15 L.Ed. 691 (1857) — *A Supreme Court decision that moved this country further along the road to Civil War.*

1. **Background and facts:**

   Dred Scott was a slave. John Emmerson had taken Scott from Missouri to Illinois where the Northwest Ordinance and state law forbade slavery. Later, he took Scott to Fort Snelling in a territory where slavery was banned by the Missouri Compromise. Then, Emmerson took Scott back to Missouri. Emmerson died and Scott sued the widow for his freedom claiming that the trips to the free areas had made him free.

   The Missouri Supreme Court ruled that regardless of Scott's right to freedom while in the free area, he became a slave upon his return to Missouri.

   Then Mrs. Emmerson did something extraordinary. She passed title to her brother in New York, John Sanford. This was a friendly action. It was a test case. The transfer of title allowed Scott to sue for his freedom in federal court claiming he was a citizen of Missouri and since his new "master" was a citizen of New York, the federal court had jurisdiction on the basis of diversity of citizenship.

2. **The issue and decision:**

   Scott lost in the lower court. The Southern majority in the Supreme Court affirmed. The Court ruled that Scott was still a slave. Three of the justices said that no Negro,

(continued)

even if free, was a citizen of the United States. Also, for the first time since Marbury v. Madison in 1803, the Supreme Court held an Act of Congress was unconstitutional, i.e., the Missouri Compromise.

The decision increased polarization in the country. Four years later the Civil War broke out on the slavery issue. The case points up a tragic exception to one philosophy of the Court's power: The Supreme Court is not final because it's right, but right because it's final. The people were the final deciders of the issue of slavery.

B. Brown v. Board of Education, 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083 (1955) — *The Supreme Court opens the schools to all children regardless of race, color, or creed.*

Plessy v. Ferguson, an 1896 case, held that separate facilities for the races was constitutional if the facilities were equal. In 1938, the Supreme Court began to chip away at the holding while still following it. In that year Missouri ex rel. Gaines v. Canada, 305 U. S. 337, 59 S.Ct. 232, 83 L.Ed. 208, invalidated the refusal to admit Negroes to the University of Missouri School of Law, the only existing law school maintained by the state, holding that the state's offer to pay petitioner's tuition at an out-of-state law school pending establishment of a state law school for Negroes did not satisfy the state's obligation "to give the protection of equal laws . . . within its own jurisdiction".

Finally in 1954 Brown v. Board of Education held that separate but equal was a myth. Separate facilities for the races was inherently unequal. This ruling of the Court changed the law in 21 states that maintained segregated classrooms. The Congress soon followed the lead of the Supreme Court in enacting civil rights legislation. We are still feeling the impact of that decision.

C. Baker v. Carr, 369 U.S. 186, S.Ct. 691, 7 L.Ed 2d 663 (1962) — *An example of the Court as both a political creature and a policymaker.*

1. **Facts and background:**

The shift in population to American cities has given rise to problems of public policy, power, finance and government. State legislatures have in the main, not provided solutions to these problems. One of the reasons for this is malapportioned legislative representation. Legislative districts drawn long ago no longer reflect the rural/urban population ratio.

At first the Supreme Court was hesitant to deal with malapportioned legislative representation. "Courts ought not to enter this political thicket," Justice Frankfurter warned in 1946. (Colegrove v. Green, 328 U.S. 549, 66 S.Ct. 1198, 90 L.Ed. 1432 (1946))

However, in 1962, the Supreme Court jumped headlong into the thicket by deciding the case of Baker v. Carr.

Charles Baker and nine other voters from Memphis filed suit against Joe Carr, Tennessee's Secretary of State, to get changes in the state's election procedures alleging a violation of their constitutional right to equal protection of the law guaranteed by the 14th Amendment.

The Tennessee Constitution of 1871 provided that the state's electoral districts should be revised every 10 years to reflect population shifts. The Tennessee legislature hadn't done so for 60 years.

2. **The issues and decision:**

Rejecting precedents to the contrary, the Court decided that this was a matter for the courts to decide when a constitutional protection had been violated, i.e., the issue of malapportioned legislative representation was no longer a "political question".

The Supreme Court sent the case back to the district court for a trial on the substantive issues of the suit in March of 1962. By November, voters in 30 of the 50 states filed suits for new voting districts.

The principle of "one man, one vote" came closer to being a political reality. And, urban areas gained more voice in the state legislatures, which began to deal with big city problems.

IV. CONTEMPORARY CASE CONCERNING SEPARATION OF POWERS, REAFFIRMS THE SUPREME COURT AS FINAL INTERPRETER OF LAWS.

A. United States of America v. Richard Nixon, President of the United States (No. 73-1766) Richard Nixon, President of the United States v. United States of America (No. 73-1834)

1. Facts:

On March 1, 1974, a federal grand jury indicted seven defendants (including John Mitchell, H. R. Haldeman, John Ehrlichman and Charles Colson) in the "Watergate cover-up" case; the defendants were charged with a number of offenses, including conspiracy to defraud the United States and to obstruct justice. The grand jury voted (19-0) to name President Nixon as an unindicted co-conspirator. To obtain evidence related to this case, the Special Prosecutor moved for the U. S. district court to issue a subpoena **duces tecum** ordering the President to produce electronic tapes, transcripts, memoranda and other papers relating to 64 specified White House conversations among persons named as co-conspirators, including the President. The court issued the subpoena on April 18. On April 30, the President released to the public 1,216 pages of edited transcripts of 43 Watergate-related conversations. The next day, his counsel moved to quash the subpoena. All seven of the defendants in U. S. v. Mitchell opposed this motion to quash. Counsel for the President also moved to expunge the grand jury's naming of the President as co-conspirator. On May 20, the court denied both the motion to quash and the motion to expunge, and ordered the President to produce the subpoenaed items for the court's **in camera** inspection. This order was stayed so that the President could appeal.

On May 24 the President appealed from the district court's order to the U. S. Court of Appeals for the District of Columbia Circuit. At the same time, the President filed a petition for mandamus, asking the court of appeals to direct the district court to vacate its order. Later on the same day, the Special Prosecutor petitioned the Supreme Court to hear the cases immediately, bypassing the court of appeals. That petition was opposed by the President, who argued against haste in disposing of the case. On May 31, the Supreme Court granted the Special Prosecutor's petition. On June 6, the President's counsel filed a cross-petition asking the Supreme Court to consider the question whether the grand jury had authority to name the President as an unindicted co-conspirator. The Court granted this petition on June 15.

2. **Issues and decision:**

   a. Does the U. S. Supreme Court have jurisdiction?
      The President argued that the dispute between the Special Prosecutor and him was an "intra-executive dispute" and therefore the federal courts have no jurisdiction. Does this bar jurisdiction?

      Held: "The mere assertion of a claim of an 'intra-branch dispute' without more, has never operated to defeat federal jurisdiction." 94 S.Ct. 3090, 3100 (1974).

   b. Did the District Court's order satisfy the requirement of the Federal Rules of Criminal Procedure that subpoenaed items be relevant, admissible in evidence, and needed for use at the trial?

      Held: ". . . the Special Prosecutor, in order to carry his burden, must clear three hurdles: (1) relevancy; (2) admissibility; (3) specificity. Our own review of the record necessarily affords a less comprehensive view of the total situation than was available to the trial judge and we are unwilling to conclude that the District Court erred in the evaluation of the Special Prosecutor's showing under Rule 17 (c)." 94 S.Ct. 3090, 3103 (1974).

      ". . . We are persuaded that the District Courts denial of the President's motion to quash the subpoena was consistent with Rule 17(c). We also conclude that the Special Prosecutor has made a sufficient showing to justify a subpoena for production **before** (court's italics) trial. 94 S.Ct. 3090, 3105 (1974).

   c. Is the subpoenaed material protected from judicial scrutiny by the doctrine of executive privilege?
      (1) Is there an "absolute" privilege, effective whenever the President asserts the privilege? In other words, who decides on the existence of a privilege — the President, or the courts?

      Held: "We . . . reaffirm that it is 'emphatically the province and duty' (of) this Court 'to say what the law is' with respect to the claim of privilege presented in this case." 94 S.Ct. 3090, 3106 (1974).

      (2) If the privilege is not absolute and hence only qualified, what criteria should be used by the courts in determining whether there is a privilege in a specific case?

Held: "Absent a claim of need to protect military, diplomatic or sensitive national secrets, we find it difficult to accept the argument that even the very important interest in confidentiality of presidential communications is significantly diminished by production of such material for **in camera** (court's italics) inspection with all the protection that a district court will be obliged to provide." 94 S.Ct. 3090, 3107 (1974).

3. Impact:

   a. President Nixon complied with the Supreme Court's ruling and relinquished the tapes to the District Court.
   b. In addition, President Nixon made public the contents of the tape recordings.
   c. As a result of statements contained in the tape recordings indicating complicity in a conspiracy to obstruct justice, Mr. Nixon became the first President to resign from office.

VI. THE JUVENILE COURT

GOAL: The goal of this chapter is to show the difference in the purpose, function, and operation of the Juvenile Court from the criminal system for adults.

(Part I of this outline is reprinted from Chapter 17 Missouri Family Law, published by the Missouri Bar as part of the Continuing Legal Education program. Chapter 17 was written by Hon. Noah Weinstein, Judge of the Juvenile Court of St. Louis County, and Corinne Richardson Goodman, Esquire, Legal Advisor for the Juvenile Court of St. Louis County.)

I. HISTORY, PHILOSOPHY AND FUNCTION

A. History

No institution as complex as the juvenile court emerges instantaneously and fully formed. It is rather the essence of thought that originated as early as the 18th century. The 19th century saw the beginning of the first efforts to separate juvenile from adult offenders in correctional institutions. By the time that the first juvenile court legislation was enacted in Illinois in 1899, many new reform ideas had already been tried. Systems of probation had been innovated and were in effect. The development of public education, services for neglected children and protection against child labor abuses were all part of the general movement to advance the welfare of children. These developments, essentially based upon new theories of human behavior, had a direct influence upon certain concepts of the legal order such as the idea of criminal responsibility based upon the assumption of a free moral agent confronted with a choice between doing right and doing wrong and choosing freely to do wrong.

The juvenile court represents to a significant degree the reaction against the older methods of dealing with children under the then existing legal order. Historic examples of the inhumanity of criminal justice in dealing with the problem of the errant child and the public attitudes supportive of these brutal practices are abundantly documented by the legal reports of judicial proceedings in the 18th and 19th centuries. The juvenile court movement was founded on strong and explicit dissatisfaction with conditions then generally prevailing and was intended to effect a radical and extensive reform.

The first positive legislation in Missouri in the general direction of our modern conception of differential treatment of children was enacted by the legislature in 1901. This particular statute was captioned "Crimes and Punishments: Probation for Juvenile Delinquents" and was applicable only to children under 16 years of age who were tried and convicted of a crime in cities of 350,000 inhabitants or more. Although the probation statute contained certain features of the juvenile court statutes as we know them today (e.g., the court had discretion to commit a child to a state training school for boys or girls,) it did not establish a separate court for children nor did it embrace the fundamental concept that all children who violate criminal laws are wards of the state in special need of the state's care, protection and treatment, and are not to be treated as criminals.

In 1903, the legislature repealed the 1901 probation act and enacted the first set of laws under the title "Juvenile Courts Established: An Act to Regulate the Treatment and Control of Neglected and Delinquent Children in Counties Having a Population of 150,000 Inhabitants and Over." Although the act established for the first time a "Juvenile Court" in Missouri, the legislation was substantially the same as the 1901 probation act. However, it provided a few new "tools" especially designed as an aid in reforming the character and personality of a child. For example, if a delinquent child was sentenced to confinement in an institution in which adult convicts were kept, the 1903 juvenile act declared it unlawful to keep the child in the same building or yard as adults, and any contact between them was prohibited.

Although some progress was made between 1903 and 1957 in implementing and developing the concept of the juvenile court in Missouri (e.g., by 1917, juvenile courts were established in all counties), the departure from criminal procedure and practice in the handling of juveniles was not complete until the enactment of the 1957 Juvenile Code. Since 1957, the Code has been amended in three ways: first, the jurisdiction of the juvenile court was extended in 1959 to include the power to terminate parental rights to a child; second, in 1963 the section relating to disposition of epileptic, mentally deficient or otherwise mentally disordered children was updated to include specific reference to the treatment facilities within the state which are currently available to the court; and third, in 1965 the compensation of juvenile officers was slightly increased.

B. Philosophy

The basic dichotomy that is inherent in the philosophy of the juvenile court is aptly expressed by the phrase contained in most juvenile court legislation to the effect that the general purpose of the juvenile court is to advance the child's welfare AND at the same time the interests of the state. Sec. 211.011 of the Juvenile Code of Missouri provides that the purpose of the juvenile court "is to facilitate the care, protection and discipline of children who come within the jurisdiction of the juvenile court . . . to the end that each child . . . shall receive such care, guidance and control . . . as will conduce to the child's welfare and the best interests of the state. . . ."

Because the focus of the juvenile court is primarily upon the "care, guidance and control" of each and every child coming within its jurisdiction rather than upon punitive action taken by the state against errant children, the philosophy of the juvenile court has been defined as "individualized justice." This term means that each child coming before the court is considered on an individual basis with the goals of (1) protecting and rehabilitating the child to be a useful person to himself and society, (2) protecting society against both the future delinquent acts of the child and against the necessity of the state assuming the burden of supporting and caring for the neglected and delinquent child and (3) upholding the dignity of the law. Justice Cardozo aptly wrote that a judge in the juvenile court "has to decide human questions which cannot be settled merely by citing old precedents. You cannot chart the future of a boy or girl or family by repeating what a learned judge said in a celebrated case."

If by applying the concept of "individualized justice" the juvenile court can provide the child with treatment that will profoundly change his motivation and behavior so that he will be able to live in harmony, rather than at war, with the community, then that court has advanced the welfare of the child and made a fundamental contribution to the "interest of the state." A community which fails to provide its children with the means of rehabilitation will inevitably suffer the effects of self-inflicted wounds.

Inherent in the concept of "individualized justice" is the concept of "parens patriae." The literal meaning of the Latin words "parens patriae" is "parent of the country." As applied to the juvenile court, this concept means that the court acts as a substitute parent for children coming within its jurisdiction when it becomes necessary to promote the best interest of the child and of the state. As specified in the Juvenile Code, "sections 211.011 to 211.431 shall be liberally construed, therefore, to the end that each child coming within the jurisdiction of the juvenile court shall receive such care, guidance and control, preferably in his own home, as will conduce to the child's welfare and the best interests of the state and that when such child is removed from the control of his parents the court shall secure for him care as nearly as possible equivalent to that which should have been given him by them." (Sec. 211.011.)

Two important qualifications to the court's power to act as the "parens patriae" should be noted. First, the juvenile court does not have the unrestricted power to assume control over all children. Its power is limited by jurisdictional requirements. As stated in Sec. 211.011, the court's power to act extends only over children who come within its jurisdiction. Secondly, if a child under the jurisdiction of the court is in need of care, guidance or control, the court should preferably leave the child in his own home while giving him all the benefit of the services which the court and the community have to offer. Should it become necessary to remove the child from the control of his parents, it is incumbent upon the court to place him in a foster home or institution which gives the child the "parental" care and guidance to which he is entitled.

C. Function

The juvenile court is a court. It is, in addition, an agency of government charged with manifold administrative responsibilities which are discharged as part of its court function. The administrative function of the court is not only necessarily implicit in its philosophy but is implemented by legislation which provides for: the appointment of juvenile officers (Sec. 211.361) and the establishment of their duties (Sec. 211.401); the appointment of personnel necessary to provide the court with proper treatment services for children coming under its jurisdiction (Sec. 211.161); and, the authority of the court to make dispositions especially required in particular cases (e.g., Sec. 211.181).

It must be recognized that there are cases in which the court is incapable of, or, rather prevented from, achieving its rehabilitative objectives either because of the limits of scientific knowledge or because of the facilities and personnel available to it. The juvenile court, particularly in a large urban community, is confronted by significant numbers of adolescents whose behavior cannot be ignored since it imperils the basic security of the community, and who, as a class, elude the reformative capabilities of the court. These are adolescents who are not mentally ill in any sense of the term that meaningfully distinguishes this group from the population as a whole. They are children alienated from the legitimate institution of society, lacking in opportunities and goal satisfactions, victims of discrimination and cultural deprivation. Their behavior may often reflect normal adaptation to the social conditions to which they are subjected. Such behavior is at least in large part the product of conditions not within the control of the court, conditions which create the environment to which the child must return after the program of treatment instituted by the juvenile court has come to an end.

But this does not mean that such cases should be excluded from the jurisdiction of the juvenile court. The processes of the court, with all their limitations, still represent the best and least harmful method that our civilization has devised to handle these problems.

The rehabilitative ideal, the aspiration to advance "the best interests of the child" has provided the inspiration and the impetus for the important effort to improve and render more rational the methods of dealing with children who run afoul of community standards and expectations. The importance of preserving the ideal and vitalizing the dynamics of reform cannot be seriously doubted.

That the welfare of many delinquent and neglected children has been advanced as a result of their contacts with the juvenile court and that more substantial gains in this respect could be made through more generous governmental support of the court's program are facts that demand acknowledgment in any appraisal of the court and its work. Some measures urgently required to advance the rationality and decency of the total rehabilitative process include such mundane matters as the improvement of the physical environment of the training schools and the enhancement of the quality of their programs of academic and vocational instruction as well as their overall treatment program.

The importance of the rehabilitative ideal that has played such a vital role in the history and development of the juvenile court cannot be serously challenged. The court has contributed significantly to the welfare of children and its capacities in this respect have never been fully exploited.

II. Sections of the Missouri Juvenile Code of Interest to Teachers: RSMO 211.011 to 211.431 and 211.411 to 211.511

JUVENILE COURTS

211.011. Purpose of law-how construed. —1. The purpose of Sections 211.011 to 211.431 is to facilitate the care, protection and discipline of children who come within the jurisdiction of the juvenile court. Sections 211.011 to 211.431 shall be liberally construed, therefore, to the end that each child coming within the jurisdiction of the juvenile court shall receive such care, guidance and control, preferably in his own home, as will conduce to the child's welfare and the best interest of the state and that when such child is removed from the control of his parents the court shall secure for him care as nearly as possible equivalent to that which should have been given him by them.

211.021. Definitions. — As used in sections 211.011 to 211.431, unless the context clearly requires otherwise:

1. **"Adult"** means a person seventeen years of age or older;
2. **"Child"** means a person under seventeen years of age;
3. **"Juvenile Court"** means the Cape Girardeau court of common pleas and the circuit court of each county, except that in the judicial circuits having more than one judge, the term means the juvenile division of the circuit court of the county;
4. **"Legal custody"** means the right to the care, custody and control of a child and the duty to provide food, clothing, shelter, ordinary medical care, education, treatment and discipline of a child. Legal custody may be taken from a parent only by court action and if the legal custody is taken from a parent without termination of parental rights, the parent's duty to provide support continues even though the person having legal custody may provide the necessities of daily living;
5. **"Parent"** means either a natural parent or a parent by adoption and if the child is illegitimate, "parent" means the mother.

211.031. Jurisdiction of juvenile court over children who are neglected or charged with crime. — Except as otherwise provided herein, the juvenile court shall have exclusive original jurisdiction in proceedings:

1. Involving any child who may be within the county who is alleged to be in need of care and treatment because:
   (a) The parents or other persons legally responsible for the care and support of the child neglect or refuse to provide proper support, education which required by law, medical, surgical or other care necessary for his well-being; except that reliance by a parent, guardian or custodian upon reme-

dial treatment other than medical or surgical treatment for a child shall not be construed as neglect when the treatment is recognized or permitted under the laws of the state; or

(b) The child is otherwise without proper care, custody or support; or

(c) The behavior, environment or associations of the child are injurious to his welfare or to the welfare of others; or

(d) The child is alleged to have violated a state law or municipal ordinance;

2. Concerning any minor seventeen years of age or older who may be within the county, and who is alleged to have violated a state law or municipal ordinance prior to having become seventeen years of age;
3. For the suspension of a state or local license;
4. For the adoption of a person;
5. For the commitment of a child to the guardianship of the department of public health and welfare as provided by law.

211.041. When jurisdiction over the person of a child has been acquired by a juvenile court under the provisions of this chapter in proceedings coming within the applicable provisions of section 211.031, the jurisdiction of the child may be retained for the purpose of this chapter until he has attained the age of twenty-one years, except in cases where he is committed to and received by the state board of training schools, unless jurisdiction has been returned to the committing court by provisions of Section 219.220 through requests of the court to the Board of Training Schools.

211.051. Jurisdiction as to custody of child not exclusive. Nothing contained in sections 211.011 to 211.431 deprives other courts of the right to determine the legal custody of children upon writs of habeas corpus or to determine the legal custody or guardianship of children when the legal custody or guardianship is incidental to the determination of causes pending in other courts. Such questions, however, may be certified by another court to the juvenile court for hearing, determination or recommendation.

211.061. Arrested child taken before juvenile court - transfer of prosecution to juvenile court. —

1. When a child is taken into custody with or without warrant for an offense, the child together with any information concerning him and the personal property found in his possession, shall be taken immediately and directly before the juvenile court or delivered to the juvenile officer or person acting for him.

2. If any person is taken before a magistrate or police judge of another court, and it is then, or at any time thereafter, ascertained that he was under the age of seventeen years at the time he is alleged to have committed the offense, or that he is subject to the jurisdiction of the juvenile court as provided by sections 211.011 to 211.431, it is the duty of the magistrate or judge forthwith to transfer the case or refer the matter to the juvenile court, and direct the delivery of such person, together with information concerning him and the personal property found in his possession, to the juvenile officer or person acting as such. The juvenile court shall proceed as in other cases instituted under sections 211.011 to 211.431.

211.071. Child prosecuted under general law, when. — In the discretion of the judge of the juvenile court, when any petition under sections 211.011 to 211.431 alleges that a child of the age of fourteen years or older had committed an offense which would be a felony if committed by an adult, or that the child has violated a state or municipal traffic law or ordinance or that a minor between the ages of seventeen and twenty-one years over whom the juvenile court had jurisdiction has violated any state law or municipal ordiance, the petition may be dismissed and such child or minor may be prosecuted under the general law, whenever the judge after receiving the report of the investigation required by sections 211.011 to 211.431 and hearing evidence finds that such child or minor is not a proper subject to be dealt with under the provisions of sections 211.011 to 211.431.

211.081. Preliminary inquiry as to institution of proceedings. — Whenever any person informs the court in person and in writing that a child appears to be within the purview of applicable provisions of section 211.031, the court shall make or cause to be made a preliminary inquiry to determine the facts and to determine whether or not the interests of the public or of the child require that further action be taken. On the basis of this inquiry the juvenile court may make such informal adjustment as is practicable without a petition or may authorize the filing of a petition by the juvenile officer.

211.091. Petition in juvenile court — contents. —

1. The petition shall be entitled "In the interest of ______________ a child under seventeen years of age."
2. The petition shall set forth plainly:
   - (a) The facts which bring the child within the jurisdiction of the court;
   - (b) The full name, birth date, and residence of the child;
   - (c) The names and residence of his parents, if living;

(d) The name and residence of his legal guardian if there be one, of the person having custody of the child or of the nearest known relative if no parent or guardian can be found; and

(e) Any other pertinent data or information.

3. If any facts required in subsection 2 are not known by the petitioner, the petition shall so state.

211.101. Issuance of summons — notice — temporary custody of child — subpoenas. —

1. After a petition has been filed, unless the parties appear voluntarily, the juvenile court shall issue a summons in the name of the state of Missouri requiring the person who has custody of the child to appear personally and, unless the court orders otherwise, to bring the child before the court, at the time and place stated.
2. If the person so summoned is other than a parent or guardian of the child, then the parent or guardian or both shall also be notified of the pendency of the case and of the time and place appointed.
3. If it appears that the child is in such condition or surroundings that his welfare requires that his custody be immediately assumed by the court, the judge may order, by indorsement upon the summons, the officer serving it to take the child into custody at once.
4. Subpoena may be issued requiring the appearance of any other person whose presence, in the opinion of the judge, is necessary.

211.111. Summons, how served. —

1. Service of summons shall be made personally by the delivery of an attested copy thereof to the person summoned. But if the juvenile court is satisfied after thorough investigation that it is impracticable to serve the summons personally, it may order service by registered mail to the last known address of the person.
2. Personal service shall be effected at least twenty-four hours before the time set for hearing. Registered mail shall be at least five days before the time of the hearing.
3. Service of summons may be made by any suitable person under the direction of the court.

211.121. Failure to respond to summons, contempt — warrant for custodian of child. — If any person summoned by personal services fails without reasonable cause to appear, he may be proceeded against for contempt of court. In case the parties fail to obey the summons or, in any case when it appears to the court that the service will be ineffectual a *capias* may be issued for the parent or guardian, or for the child.

211.131. Taking child into custody, effect – notice to parents – jurisdiction attaches, when. –

1. When any child found violating any law or ordinance or whose behavior, environment or associations are injurious to his welfare or to the welfare of others or who is without proper care, custody or support is taken into custody, the taking into custody is not considered an arrest.
2. When a child is taken into custody, the parent, legal custodian or guardian of the child shall be notified as soon as possible.
3. The jurisdiction of the court attaches from the time the child is taken into custody.

211.141. Child returned to parent, when – detention on order of court – detention without order, when –

1. When a child is taken into custody as provided in section 211.131, the person taking the child into custody shall, unless it is impracticable, undersirable, or has been otherwise ordered by the court, return the child to his parent, guardian or legal custodian on the promise of such person to bring the child to court, if necessary, at a stated time or at such times as the court may direct. If the person taking the child into custody believes it desirable, he may request the parent, guardian or legal custodian to sign a written promise to bring the child into court.
2. If the child is not released as provided in subsection 1, he may be detained in any place of detention specified in section 211.151 but only on order of the court specifying the reason for detention. The parent, guardian or legal custodian of the child shall be notified of the place of detention as soon as possible.
3. If, because of the unreasonableness of the hour or the fact that it is a Sunday or holiday, it is impractical to obtain a written order from the court, the child may be detained without an order of the court for a period not to exceed twenty-four hours in any place of detention specified in section 211.151, but a written record of such detention shall be kept and a report in writing filed with the court. In the event that the judge is absent from his circuit, or is unable to act, the approval of another circuit judge of the same or adjoining circuit must be obtained as a condition for detaining a child for more than twenty-four hours.

211.151. Places of detention – photographing and fingerprinting restrictions. –

1. Pending disposition of the case, the juvenile court may order in writing the detention of a child in one of the following places:
   (a) A detention home provided by the county;

(b) A foster home, subject to the supervision of the court;

(c) A suitable place of detention maintained by an association having for one of its objects the care and protection of children;

(d) A jail or other facility for the detention of adults, if the child's habits or conduct are such as to constitute a menace to himself or others and then only if he is placed in a room or ward entirely separate from adults confined therein;

(e) Or such other suitable custody as the court may direct.

2. Neither fingerprints nor a photograph shall be taken of a child taken into custody for any purpose without the consent of the juvenile judge.

211.161. Court may require physical or mental examination of child - costs paid by county. –

1. The court may cause any child within its jurisdiction to be examined by a physician, psychiatrist or psychologist appointed by the court in order that the condition of the child may be given consideration in the disposition of his case. The expenses of the examination when approved by the court shall be paid by the county.
2. The services of a state, county or municipally maintained hospital, institution, or psychiatric or health clinic may be used for the purpose of this examination and treatment.
3. A county may establish medical, psychiatric and other facilities, upon request of the juvenile court, to provide proper services for the court in the diagnosis and treatment of children coming before it and these facilities shall be under the administration and control of the juvenile court. The juvenile court may appoint and fix the compensation of such professional and other personnel as it deems necessary to provide the court proper diagnostic, clinical and treatment services for children under its jurisdiction.

211.171. Hearing procedure. –

1. The procedure to be followed at the hearing shall be determined by the juvenile court judge and may be as formal or informal as he considers desirable. He may take testimony and inquire into the habits, surroundings, conditions and tendencies of the child to enable the court to render such order or judgement as will best promote the welfare of the child and carry out the objectives of sections 211.011 to 211.431.
2. The hearing may, in the discretion of the court, proceed in the absence of the child and may be adjourned from time to time.

3. All cases of children shall be heard separately from the trial of cases against adults.
4. Stenographic notes or an authorized recording of the hearing shall be required if the court so orders or if requested by any party interested in the proceeding.
5. The general public shall be excluded and only such persons admitted as have a direct interest in the case or in the work of the court.
6. The practice and procedure customary in proceedings in equity shall govern all proceedings in the juvenile court.

211.181. Order for disposition or treatment of child within jurisdiction. – When a child is found by the court to come within the applicable provisions of sections 211.031, the court shall so decree and make a finding of fact upon which it exercises its jurisdiction over the child and the court may, by order duly entered, proceed as follows:

1. Place the child under supervision in his own home or in custody of a relative or other suitable person upon such conditions as the court may require;
2. Commit the child to the custody of:
   - (a) A public agency or institution authorized by law to care for children or to place them in family homes;
   - (b) Any other institution or agency which is authorized or licensed by law to care for children or to place them in family homes;
   - (c) An association, school or institution willing to receive it in another state if the approval of the agency in that state which administers the laws relating to importation of children into the state has been secured;
   - (d) The juvenile officer; or
3. Place the child in a family home;
4. Cause the child to be examined and treated by a physician, psychiatrist or psychologist and when the health or condition of the child requires it cause the child to be placed in a public or private hospital, clinic or institution for treatment and care, except that nothing contained herein authorizes any form of compulsory medical, surgical, or psychiatric treatment of a child whose parents or guardian in good faith are providing other remedial treatment recognized or permitted under the laws of this state.
5. Suspend or revoke a state or local license or authority of a child to operate a motor vehicle.

211.191. State training school law to govern commitments. – Nothing in sections 211.011 to 211.431 shall be construed to repeal any part of the law relating to the state training school for girls or the state training school for boys; and in all commitments to either of these institutions the law in reference to them shall govern.

211.211. Right to counsel before commitment to training schools. – Before any juvenile shall be committed to the state board of training schools, he shall have the opportunity to have and be represented by counsel at a hearing held for that purpose.

211.221. Religion considered in placing child. – In placing a child in or committing a child to the custody of an individual or of a private agency or institution the court shall whenever practicable select either a person, or an agency or institution governed by persons of the same religious faith as that of the parents of such child, or in case of a difference in the religious faith of the parents, then of the religious faith of the child or if the religious faith of the child is not ascertainable, then the faith of either of the parents.

211.231. Indeterminate commitments – exchange of information by court and institution or agency. –

1. All commitments made by the juvenile court shall be for an indeterminate period of time and shall not continue beyond the child's twenty-first birthday.
2. Whenever the court commits a child to an institution or agency, it shall transmit with the order of commitment a summary of its information concerning the child, and the institution or agency shall give to the court such information concerning the child as the court may require from time to time so long as the child is under the jurisdiction of the juvenile court. This information, together with all other records transmitted to the institution or agency, are privileged and for the benefit of the child only. They may be examined or subpoenaed only upon apporval of the court which committed the child to the institution or agency.

211.241. Court orders to parents for support of children, procedure – county to support, when. –

1. When the juvenile court finds a child to be within the purview of applicable provisions of section 211.031 it may in the same or subsequent proceedings, either on its own motion or upon the application of any person, institution or agency having the custody

of such child, proceed to inquire into the ability of the parent of the child to support it or to contribute to its support. If the parent does not voluntarily appear for the proceeding, he shall be summoned in the same manner as in civil cases and the summons in the case may issue to any county of the state.

2. If the court finds that the parent is able to support the child or to contribute to its support, the court may enter an order requiring the parent to support the child or to contribute to its support and to pay the costs of collecting the judgment.
3. The court may enforce the order by execution and the execution may issue on request of the juvenile officer or any person, agency or institution which has been awarded custody of the child. No deposit or bond for costs shall be required as a condition for the issuance or service of the execution. No property is exempt from execution upon a judgment or decree made under this section, and all wages or other sums due the parent is subject to garnishment or execution in any proceedings under this section.
4. Otherwise the necessary support of the child shall, unless the court commits the child to a person or institution willing to receive it without charge, be paid out of the funds of the county but only upon approval of the judge of the juvenile court.

211.251. Modification of court orders. –

1. A decree of the juvenile court made under the provisions of section 211.181 may be modified at any time on the court's own motion.
2. The parent, guardian, legal custodian, spouse, relative or next friend of a child committed to the custody of an institution or agency may, at any time, petition the court for a modification of the order of custody. The court may deny the petition without hearing or may, in its discretion, conduct a hearing upon the issues raised and may make any orders relative to the issues as it deems proper.
3. The authority of the juvenile court to modify a decree is subject to the provisions of chapter 219, RSMo.

211.261. Appeals. – An appeal shall be allowed to the child from any final judgment, order or decree made under the provisions of sections 211.011 to 211.431 and may be taken on the part of the child by its parent, guardian, legal custodian, spouse, relative or next friend. An appeal shall be allowed to a parent from any final judgment, order or decree made under the provisions of sections 211.011 to 211.431 which adversely affects him. Notice of appeal shall be filed within thirty days after the final judgment, order or decree has been entered but neither the notice of appeal nor any motion filed subsequent to the final judgment acts as a *supersedeas* unless the court so orders.

211.271. Court orders not to affect civil rights – not evidence, exception. –

1. No adjudication by the juvenile court upon the status of a child shall be deemed a conviction nor shall the adjudication operate to impose any of the civil disabilities ordinarily resulting from conviction nor shall the child be found guilty or be deemed a criminal by reason of the adjudication.
2. No child shall be charged with a crime or convicted unless the case is transferred to a court of general jurisdiction as provided in this chapter.
3. After a child is taken into custody as provided in section 211.131, all admissions, confessions, and statements by the child to the juvenile officer and juvenile court personnel and all evidence given in cases under this chapter, as well as all reports and records of the juvenile court, are not lawful or proper evidence against the child and shall not be used for any purpose whatsoever in proceedings, civil or criminal, other than proceedings under this chapter.
4. The disposition made of a child and the evidence given in the court does not operate to disqualify the child in any future civil or military service application or appointment.

211.281. Cost how adjudged, collected. – The costs of the proceedings in any case in the juvenile court may, in the discretion of the court be adjudged against the parents of the child involved or the informing witness as provided in section 211.081, as the case may be, and collected as provided by law. All costs not so collected shall be paid by the county.

211.291. Juvenile court room in counties of class one and two – any judge of circuit may hold court, when. –

1. In counties of the first and second class and in the city of St. Louis a court room, to be designated the juvenile court room, shall be provided by the county or circuit court of the county or city, as the case may be, for the hearing of cases under sections 211.011 to 211.431.
2. In case of the absence or inability of the judge of the juvenile in any such county to hold court, any one of the circuit judges in the judicial circuit may perform that duty.

211.301. Juvenile court held in chambers or other room in counties of class three and four – transfer of judges. –

1. In counties of the third and fourth class hearings may be con-

ducted in the judge's chambers or in such other room or apartment as may be provided or designated by the judge of the juvenile court.

2. In case of the absence or inability of the juvenile judge to hold court, he may request the supreme court to assign another circuit judge to perform that duty. Any juvenile judge having more than one county within his circuit, may, in his discretion, and in the interests of the welfare of the child involved, act upon a juvenile case arising within that circuit, irrespective of where,within the circuit, he may then be holding court.

211.311. Clerk of common pleas and circuit courts to act for juvenile court. The clerk of the Cape Giradeau court of common pleas and the clerk of the circuit court shall act as the clerk of the juvenile court.

211.321. Juvenile court records – records of peace officers as to children – destruction of records. –

1. The proceedings of the juvenile court shall be entered in a book kept for that purpose and known as the juvenile records. These records as well as all information obtained and social records prepared in the discharge of official duty for the court shall be open to inspection only by order of the court to persons having a legitimate interest therein.
2. Peace officers' records, if any are kept, of children shall be kept seperate from the records of persons seventeen years of age or over and shall not be open to inspection or their contents disclosed, except by order of the court. This subsection does not apply to children who are transferred to courts of general jurisdiction as provided by section 211.071.
3. The court may, either on its own motion or upon application by the child or his representative, or upon application by the juvenile officer, enter an order to destroy all social histories, records, and information, other than the official court file, and may enter an order to seal the official court file, as well as all peace officers' records, at any time after the child has reached his seventeenth birthday if the court finds that it is in the best interest of the child that such action or any part thereof be taken, unless the jurisdiction of the court is continued beyond the child's seventeenth birthday, in which event such action or any part thereof may be taken by the court at any time after the closing of the child's case.

211.331. Detention facilities, superintendent, appointment, compensation – acquisition of land (counties of class one and two). –

1. In each county of the first and second classes and in the city of

St. Louis, it is the duty of the county court, or, where there is no county court, such other authorized body, to provide a place of detention for children coming within the provisions of sections 211.011 to 211.431. It is also the duty of the county court or other authorized body to provide offices for the personnel of the juvenile court.

2. The place of detention shall be so located and arranged that the child being detained does not come in contact, at any time or in any manner, with adults convicted or under arrest, and the care of children in detention shall approximate as closely as possible the care of children in good homes.
3. The place of detention should be in charge of a superintendent. The judge of the juvenile court shall appoint and fix the compensation and maintenance of the superintendent and of any assistants or personnel required to operate the detention facility. Such compensation and maintenance are payable out of funds of the county.
4. The county courts or other governing body of the county is authorized to lease or to aquire by purchase, gift or devise and for such purpose, and to erect buildings thereon and to provide funds to equip and maintain the same for the subsistence and education of the children placed therein.

211.341. Detention facilities, how provided – government (class three and four counties). –

1. Counties of the third and fourth classes within one judicial circuit, shall, upon the written recommendation of the circuit judge of that judicial circuit, establish a place of juvenile detention to serve all of the counties within that judicial circuit, and in like manner, the counties shall supply offices for the juvenile officers of that circuit. The recommendation of the circuit judge shall be made only after a hearing conducted by him, after thirty days' notice, to determine the need and feasibility of establishing such a place of detention within the judicial circuit. The provisions of section 211.331 apply as to the form of operation and means of maintenance of the place of detention, except that the total cost of establishment and operation of the places of detention shall be prorated among the several counties within that judicial circuit upon a ratio to be determined by a comparison of the respective populations of the counties. The point of location of the place of juvenile detention shall be determined by the circuit judge of the judicial circuit.
2. Circuit judges of any two or more adjoining judicial circuits after a hearing as provided in subsection 1 may, by agreement confirmed by judicial order, and in the interest of economy of administration,

establish one place of juvenile detention to serve their respective judicial circuits. In such event, the circuit judges so agreeing shall jointly govern the affairs of the place of detention and the cost thereof shall be apportioned among the counties served in the manner provided for in subsection 1.

3. Any county of the third or fourth class desiring to provide its own place of juvenile detention may do so in the manner prescribed for counties of the first and second classes.

211.351. Juvenile officers, appointment – costs paid, how. –

1. The juvenile court shall appoint a juvenile officer and other necessary juvenile court personnel to serve under the direction of the court in each county of the first and second class and the circuit judge in circuits comprised of third and fourth class counties,
   (a) May appoint a juvenile officer and other necessary personnel to serve the judicial circuit; or
   (b) Circuit judges of any two or more adjoining circuits may by agreement, confirmed by judicial order, appoint a juvenile officer and other necessary personnel to serve their respective judicial circuits and in such a case the juvenile officers and other persons appointed shall serve under the joint direction of the judges so agreeing.
2. In the event a juvenile officer and other juvenile court personnel are appointed to serve as provided in subdivisions (a) and (b) of subsection 1, the total cost to the counties for the compensation of these persons shall be prorated among the several counties and upon a ratio to be determined by a comparison of the respective populations of the counties.

211.361. Qualifications of juvenile officer, how determined – effect on persons now in office. –

1. Whenever the need arises for the appointment of a juvenile officer, the juvenile court shall either:
   (a) Provide, by rule of court, for open competitive written and oral examinations and create an elgible list of persons who possess the qualifications prescribed by subdivision (b) and who have successfully passed such examination; or
   (b) Appoint any person over the age of twenty-one years who has completed satisfactorily four years of college education with a major in sociology or related subjects or who, in lieu of such academic training, has had four years or more experience in social work with juveniles in probation or allied services.

2. This section does not terminate the existing appointment nor present term of office of any juvenile officer or deputy juvenile officer in any county, but it applies to any appointment to be made after the existing appointment or term of office of any incumbent terminates or expires for any reason whatsoever.

211.371. Judges of circuit and common pleas courts to act jointly, when. — Wherever there is a court of common pleas in a county affected by a determination, decision or appointment by the juvenile court, as provided for by sections 211.331 to 211.361, the circuit judge or judges and the judge of a court of common pleas shall proceed jointly.

211.401. Duties of juvenile officers — may make arrests — cooperation. —

1. The juvenile officer shall, under direction of the juvenile court:
   - (a) Make such investigations and furnish the court with such information and assistance as the judge may require;
   - (b) Keep a written record of such investigations and submit reports thereon to the judge;
   - (c) Take charge of children before and after the hearing as may be directed by the court;
   - (d) Perform such other duties and exercise such powers as the judge of the juvenile court may direct.
2. The juvenile officer is vested with all the power and authority of sheriffs to make arrests and perform other duties incident to his office.
3. The juvenile officers or other persons acting as such in the several counties of the state shall cooperate with each other in carrying out the purposes and provisions of sections 211.011 to 211.431.

211.411. Law enforcement officials to assist and cooperate with juvenile officers. —

1. It is the duty of circuit, prosecuting and city attorneys, and county counselors representing the state or a city in any court, to give the juvenile officer such aid and cooperation as may not be inconsistent with the duties of their officers.
2. It is the duty of police officers, constables, sheriffs and other authorized persons taking a child into custody to give information of that fact immediately to the juvenile court or to the juvenile officer or one of his deputies and to furnish the juvenile court or the juvenile officer all the facts in his possession pertaining to the child, its parents, guardian or other persons interested in the child together with the reasons for taking the child into custody.

3. It is the duty of all other public officials and departments to render all assistance and cooperation within their jurisdictional power which may further the objects of sections 211.011 to 211.431. The court is authorized to seek the cooperation of all societies and organizations having for their object the protection or aid of children and of any person or organization interested in the welfare of children.

211.421. Contributing to delinquency or interfering with orders of court. –

1. After any child has come under the care or control of the juvenile court as provided in sections 211.011 to 211.431, any person who thereafter encourages, aids, or causes the child to commit any act or engage in any conduct which would be injurious to his morals or health or who knowingly or negligently disobeys, violates or interferes with a lawful order of the court with relation to the child, is guilty of contempt of court, and shall be proceeded against as now provided by law and punished by imprisonment in the county jail for a term not exceeding six months or by a fine not exceeding five hundred dollars or by both such fine and imprisonment.
2. If it appears at a juvenile court hearing that any person seventeen years of age or over has violated section 559.360, RSMo, by contributing to the delinquency of a minor, the judge of the juvenile court shall refer the information to the prosecuting or circuit attornery, as the case may be, for appropiate proceedings.

211.431. Violation of law, misdemeanor. – Any person seventeen years of age or over who willfully violates, neglects or refuses to obey or perform any lawful order of the court, or who violates any provision of section 211.011 to 211.431 is guilty of a misdemeanor.

TERMINATION OF PARENTAL RIGHTS

211.441. Court may terminate rights, when – consent, how established.

1. The juvenile court may, upon petition filed as provided in other cases of children coming under the jurisdiction of the court, terminate all rights of parents to a child when it finds that such termination is in the best interest of the child and one or more of the following conditions are found to exist.
   (a) When the parents have consented in writing to the termination of their parental rights.
   (b) When it appears by clear, cogent and convincing evidence that for one year or more immediately prior to the filing of

the petition.

(1) The parents have abandoned the child;

(2) The parents have willfully, substantially and continously or repeatedly neglected the child and refused to give the child the necessary care and protection;

(3) The parents, being financially able, have willfully neglected to provide the child with the necessary subsistence, education or other care necessary for his health, morals or welfare or have neglected to pay for such subsistence, education or other care when legal custody of the child is lodged with others;

(4) The parents are unfit by reason of debauchery, habitual use of intoxicating liquor or narcotic drugs or repeated lewd and lascivious behavior, which conduct is found by the court to be seriously detrimental to the health, morals, or wellbeing of the child;

(5) The parents have been found incompetent under chapter 475, RSMo, and are incapable, and there are reasonable grounds to believe that they will continue to be incapable of giving the child necessary care and protection.

2. The written consent as provided in subdivision (a) of subsection 1 may be executed prior to or subsequent to the institution of the proceedings and shall be acknowledged as conveyances of real estate are required to be acknowledged under the laws of this state, or, in lieu of such acknowledgement, the signature of the person giving the written consent shall be witnessed by at least two adult persons whose signatures and addresses shall be plainly written thereon.

211.451. Petition for termination, contents. – The petition for termination of parental rights shall include;

(a) The name, sex, and date and place of birth and residence of the child;

(b) The relationship of the petitioner to the child, or the fact that no relationship exists;

(c) The name and address and date of birth of the mother if the child was born out of wedlock, and the father of a child born out of wedlock who has acknowledged paternity of the child in writing or has been adjudged the father, or the names and addresses and dates of birth of the parents of the child if born in wedlock;

(d) The name and address of the person holding legal custody or guardianship of the person, or acting in *loco parentis*, or the organization or agency holding legal custody of providing care for the child;

(e) The reason or reasons why the termination of the parental rights is sought.

211.461. Parties to be summoned – service – waiver by parents. –

1. The termination of parental rights shall be made only after a hearing before the juvenile court. A summons shall be issued by the judge or the clerk of the court requiring the person, agency or organization having custody or control of the child to appear with the child at the place and time stated in the summons. Persons who shall be summoned and receive a copy of the petition shall also include the parents of the child, the surviving parent if one of the child's parents is dead, or its guardian, and the state division of welfare, agency or organization or person standing in *loco parentis* having an interest in the welfare of the child. Summons shall be issued requiring the appearance of any other person whose presence the court deems necessary or whose presence is requested by the parent, guardian or petitioner. The natural or legal guardian of a minor parent shall be summoned and served with a copy of the petition; and provided further that the parent or parents of the child may require any and all investigating welfare agency personnel connected with the particular case to testify, without immunity or privilege, and subject to the rules of cross examination.
2. Service of summons shall be made as in other civil cases in the manner prescribed in section 506.150, RSMo, provided however, if service cannot be made as perscribed in section 506.150, RSMo, then the service shall be made by mail or publication as provided in section 506.160, RSMo.
3. The parent or parents may waive appearance or service of summons in writing before the court.

211.471. Parents entitled to counsel, representation. –

1. As soon as practiceable after the filing of a petition and prior to the hearing, the parent, guardian, or custodian shall be notified of their right to have counsel, and if they request counsel and are financially unable to employ counsel, counsel shall be appointed by the court.
2. When the parent is a minor and the natural guardian is neither present nor represented, the court shall appoint a guardian *ad litem*. The court may also appoint a guardian *ad litem* for the child.

211.481. Jury trial may be demanded – record. –

1. At any time prior to the hearing, a parent by written demand shall be granted a trial of the issues by a jury, provided that when a jury is ordered the juvenile court may either continue with the trial by jury or transfer the same to any other circuit court division of the same county for trial by jury.
2. Stenographic notes or an authorized recording of the hearing shall be required as in civil actions in the circuit court.

211.491. Social investigation and report to court in termination case. – In all proceedings for termination of parental rights of a child, except in cases where the parents have consented to the termination or have abandoned the child, an investigation and social study shall be made by the juvenile officer, the state division of welfare, or other public or private agency authorized or licensed to care for children as directed by the court and a written report shall be made to the court to aid the court in determining whether the termination is in the best interest of the child, and it shall include such matters as the parental background, the fitness and capacity of the parents to discharge parental responsibilities, the child's home, present adjustment, psyical and mental condition and such other facts as are pertinent to the determination.

211.501. Order of termination, powers of court. –

1. If, after hearing, the court finds that one or more of the conditions set out in section 211.411 exist and that termination of the parental rights of the child is in the best interest of the child, it may terminate all rights of the parents with reference to the child.
2. If the court terminates the parental rights of both parents, of the mother if the child is illegitimate, or of the only living parent, it may transfer the guardianship and legal custody of the child to a suitable person, or the state division of welfare, or a licensed child welfare agency.
3. If only one parent consents or if the conditions specified in section 211.411 are found to exist as to only one parent, the rights of only that parent with reference to the child may be terminated and the rights of the other parent shall not be affected.

211.511. Form of order, effect. – An order of the court terminating parental rights shall be in writing and shall recite the jurisdictional facts. The order shall be conclusive and binding on all persons and in all proceedings after one year from the date of its entry.

VII. DUE PROCESS OF LAW

GOAL: *This chapter is designed to give teachers an overview of the development and meaning of the concept of due process of law. Further, it is designed to develop in teachers the ability to use jurisprudential thinking rather than emotional response in providing solutions to due process problems.*

The due process requirements of the 6th Amendment will be further explained in Chapter VIII.

HISTORICAL EVOLUTION OF THE CONCEPT OF DUE PROCESS

I. INTRODUCTION.

When the Bill of Rights was made a part of our constitution in 1791 the rights set out were not new ideas. Propositions about the nature of man and his relationship to the state have been formulated and articulated by philosophers at least as far back as the ancient Romans and Greeks. For example:

A. "The sun could as easily be spared from the universe as free speech from the liberal institutions of our society." Socrates 470-399 B.C.

B. "We are called a democracy, for the administration is in the hands of the many and not of the few. But while the law secures equal justice to all alike in their private disputes, the claim of excellence is also recognized; and when a citizen is in any way distinguished, he is preferred to the public service, not as a matter or privilege, but as the reward of merit. Neither is poverty a bar, but a man may benefit his country whatever be the obscurity of his condition. There is no exclusiveness in our public life, and in our private intercourse we are not suspicious of one another, nor angry with our neighbor if he does what he likes; we do not put on sour looks at him which, though harmless, are not pleasant. While we are thus unconstrained in our private intercourse, a spirit of reverence pervades our public acts; we are prevented from doing wrong by respect for authority and for the laws, having an especial regard to those which are ordained for the protection of the injured as well as those unwritten laws which bring upon the transgressor of them the reprobation of the general sentiment." Thucydides 471-401 B.C.

C. "Democracy, which is a charming form of government, full of variety and disorder, and dispensing a sort of equality to equals and unequals alike." Plato 427-347 B.C.

D. "It is plain that the state is not determined merely by community of place and by the exchange of mutual protection from harm and of good offices. These things must, indeed, exist, if there is to be a city, yet the existence of all of them does not at once constitute a state; there must be, both in households and families, a sharing of the good life, in a form at once complete and self-sufficient. Aristotle 384-322 B.C.

II. THE MAGNA CARTA.

A. The Magna Carta is the document which most influenced the propositions of man's relation to the state as espoused in the U. S. Bill of Rights.

B. English barons forced King John in 1215 to sign the Magna Carta which limited royal authority over them.

C. It set forth:

1. Justice could not be denied, delayed or sold to any nobleman.

2. No nobleman could be imprisoned, dispossessed, banished or have a property right destroyed "except by the legal judgment of his peers or by the law of the land".

D. The quoted phrase implied two things:

1. that men would henceforth have some involvement in the application of the laws, i.e., citizenship involvement.

2. that any legal action must comply with the law of the land.

E. The English courts expanded the concept of limited royal authority from protection of just nobility to protection of all men.

F. This court-expanded doctrine was extended in the Fourteenth Century to provide:

> "No man, of what state or condition he be, shall be put out of his lands or tenements nor taken nor imprisoned not disinherited nor put to death without he be brought to answer by DUE PROCESS OF LAW."

This appears to be the first time that the words "due process of law" were used.

G. Sir Edward Coke, as Chief Justice in England and later as a parliamentarian, did most to cause the expansion of the concept of limited authority by urging its application to the legislative branch of English government as well as the King.

1. For example, in a famous case called Dr. Bonham's case where the London College of Physicians attempted to compel Bonham to pay money into a fund for practicing medicine in London without a license, Coke wrote as dictum:

> "And it appears in our books, that in many cases, the common law will control Acts of Parliament, and sometimes adjudge them to be utterly void; for when an Act of Parliament is against common right and reason, or repugnant, or impossible to be performed, the common law will control it, and adjudge such Act to be void . . ." Dr. Bonham's Case, 8 Co. 113b, 118a, 77 Eng. Rep. 646, 652 (1610).

H. When the English came to the New World they received a guarantee from King James I that these protections still applied. First Charter of Virginia, April 10, 1606.

I. The Fifth Amendment contains the "due process of law" clause which was based upon the rights guaranteed in England. It is applicable to the federal government.

III. WHAT DO THE TERMS "SUBSTANTIVE" AND "PROCEDURAL" DUE PROCESS MEAN? (discussion question)

A. Substantive Due Process: The question is whether the lawmaker has the power under the constitution to do whatever was done.

1. For example, the last part of the Fifth Amendment says ". . . nor shall private property be taken for public use without just compensation".

2. For example, during the Roosevelt Administration, the Supreme Court found that it was beyond the power of Congress to institute widespread regulation of the economy.

3. These examples go to the substance of governmental power.

B. Procedural Due Process: The question is whether the lawmaker has correctly followed prevailing procedures in the exercise of power.

1. For example, in the case of the government taking land for public use, the landowner has a right to a hearing to assure that the land is being taken for a "public use" and that he is receiving "just compensation".

2. For example, in criminal prosecutions, the federal constitution sets out some of the procedural safeguards required to afford the accused due process.

3. These examples involve procedural aspects of due process.

IV. HAVE THE GUARANTEES OF THE BILL OF RIGHTS ALWAYS APPLIED TO THE STATES? DO THEY NOW? (discussion question)

A. In an 1833 case, Baron v. Mayor and City Council of Baltimore, 32 U. S. (7 Pet.) 243, 8 L.Ed. 672 (1833), the Supreme Court held that the Bill of Rights did not apply to the states.

B. But, lawyers used the due process clauses in state constitutions to protect individuals rights, e.g., Article 1, Section 10 of the 1945 Missouri Constitution.

C. And, since the 1833 Baron decision, the Fourteenth Amendment was adopted, which provided:

   1. The Fourteenth Amendment provides:

      > "... No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law ..."

D. Does this mean that the states must comply with the protections afforded citizens by the Bill of Rights? (discussion question)

E. If so, do all the amendments of the Bill of Rights apply? (discussion question)

F. If not, which amendments do apply and why do you think they were selected? (discussion question)

   1. Three theories have been used by various members of the Court:

      a. The "ordered liberty" or "fundamental fairness" theory:

      > "... the due process clause of the Fourteenth Amendment may make it unlawful for a state to abridge by its statutes the freedom of speech which the First Amendment safeguards against encroachment by the Congress; or the like freedom of the press; or the free exercise of religion; or the right of peaceable assembly ... In these and other situations immunities that are valid as against the federal government by force of the specific pledges of particular amendments have been found to be implicit in the concept of ordered liberty and thus through the Fourteenth Amendment, become valid as against the states ... (To be found as applicable to a state, a requirement of the Bill of Rights must be) a principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." Palko v. Connecticut, 302 U. S. 319, 58 S. Ct. 149, 82 L.Ed. 288 (1937).

      b. The "incorporation" theory:

      Justice Black, dissenting in a 5-4 decision, was joined by Douglas, Murphy and Rutledge in his belief that the Bill of Rights was incorporated wholesale in the Fourteenth Amendment. Therefore, all the specific guarantees are applicable to the states. He said, in part:

      > "... In my judgment the Fourteenth Amendment's history conclusively demonstrates that the language of the first section of the Fourteenth Amendment, taken as a whole, was thought by those responsible for its submission to the people, and those who opposed its submission, sufficiently explicit to guarantee that thereafter no state could deprive its citizens of the privileges and protections of the Bill of Rights ... If the choice must be between the selective process of the Palko decision applying some of the Bill of Rights to the States, or the Twining rule applying none of them, I would choose the Palko selective process. But

rather than accept either of these choices, I would follow what I believe was the original purpose of the Fourteenth Amendment — to extend to all the people of the nation the complete protection of the Bill of Rights . . ." Adamson v. California, 332 U.S. 46, 67 S.Ct. 1672, 91 L.Ed. 1903 (1947).

c. The most current approach:

The difference between this approach and the others is pointed out in footnote 14 of the case Duncan v. Louisiana, 391 U.S. 145, 88 S.Ct. 1444, 20 L.Ed. 2d 491 (1968):

"In one sense recent cases applying provisions of the first eight amendments to the States represent a new approach to the 'incorporation' debate. Earlier the Court can be seen as having asked, when inquiring into whether some particular procedural safeguard was required of a State, if a civilized system could be imagined that would not accord the particular protection . . . The recent cases, on the other hand, have proceeded upon the valid assumption that state criminal processes are not imaginary and theoretical schemes but actual systems bearing virtually every characteristic of the common-law system that has been developing contemporaneously in England and in this country. The question thus is whether given this kind of system a particular procedure is fundamental — whether, that is, a procedure is necessary to an Anglo-American regime of ordered liberty . . ."

2. These portions of the Bill of Rights have been found to protect citizens from state action:

a. First Amendment.
   (1) freedom of speech
   (2) freedom of religion
   (3) freedom of assembly
   (4) freedom of press
b. Fourth Amendment.
   (1) search and seizure provisions
   (2) warrant provisions
c. Fifth Amendment.
   (1) freedom from double jeopardy
   (2) freedom from self-incrimination
   (3) just compensation for private property provision
d. Sixth Amendment.
   (1) all provisions
e. Eighth Amendment.
   (1) protection against cruel and unusual punishment

V. STATE ACTION.

A. The Fourteenth Amendment says:

"No state shall . . ."

B. **WHO** is the state?

1. Basic Principle: State action exists when there is "significant state involvement" in the activities of private persons.

2. When does an activity have "significant state involvement?"

    a. Any delegation of government or municipal function, i.e., pervasive state regulation and/or an essential activity of the state.
    Examples:
    (1) Smith v. Allwright, 321 U.S. 649, 664 (1944).
    "When Primaries become a part of the machinery for choosing officials, state and national, as they have here, the same tests to determine the character of discrimination or abridgement should be applied to the primary as are applied to the general election."
    (2) Shelley v. Kraemer, 334 U. S. 1 (1948).

    Thirty property owners in the City of St. Louis signed mutual restrictive covenants limiting occupancy to persons of the "Caucasian race" for 50 years.

    A Negro obtained title to one of the properties and the other titleholders sued. The Missouri Supreme Court upheld the validity and enforceability of the restrictive covenant. The United States Supreme Court upheld the validity of the covenant but denied the use of the courts to enforce it.

    "That the action of state courts and judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment, is a proposition which has long been established by decisions of this Court . . ."
    (3) Griffin v. County School Board of Prince Edward County, 375 U. S. 391 (1964).
    The local school board was found to operate only as an arm of the state government, and therefore, the state was denying equal protection of the laws when it allowed other schools to continue operating at the taxpayers' expense while the schools in Prince Edward County were closed.

    b. Use of state property by private person in serving the public, i.e., does the facility exist because of a government effort to fullfill desires of the public.

    c. Substantial government assistance "plus".
    Guillory v. The Administrators of The Tulane University of Louisiana, 203 F. Supp. 855 (E.D.La. 1962).

    Even though tuition grants are made to private individuals, the financial support, control of standards, and other aspects of state activity may subject the entire program to the constitutional inhibitions declared to exist on state action.

    It is evident from other cases that if the amount of governmental funds supporting an otherwise private institution becomes substantial enough, then the operation of the institution may partake of state action and be subject to the restrictions of the Fourteenth Amendment.

VI. ONCE IT IS DECIDED THAT THERE IS A "STATE" ACTION, HOW DOES THE COURT DECIDE IF DUE PROCESS HAS BEEN GIVEN? WHAT FACTORS SHOULD THEY TAKE INTO ACCOUNT IN DECIDING HOW FORMAL A PROCEEDING MUST BE?

A. Whether the Constitution requires that a particular right obtain in a specific proceeding depends upon a complexity of factors:

1. the nature of the alleged right.

2. the nature of the proceeding.

3. the possible burden on that proceeding.

B. Examples:

1. In re Gault, 387 U.S. 1, 87 S.Ct. 1428, 18 L.Ed. 2d 527 (1967).

   a. Nature of proceeding: juvenile hearing that could result in commitment to an institution.
   b. Nature of alleged rights: the parents or guardian and the child must be
      (1) given sufficient notice to permit preparation of defense to the charges.
      (2) notified of the child's right to be represented by counsel and have one assigned if unable to retain one,
      (3) afforded the privilege against self-incrimination and the rights of confrontation and cross-examination of witnesses.
   c. Burden of proceeding:
      (1) less informality and more like an adversary proceeding.
      (2) greater time and expenses.
   d. Outcome: nature of rights of overriding concern. While juveniles may not possess **all** the rights of adults in a criminal proceeding, they do have these enumerated above.

2. Goldberg v. Kelly, 90 S.Ct. 1011, 25 L.Ed. 2d 287 (1970).

   a. Nature of proceeding: administrative agency termination of welfare payments.
   b. Nature of alleged rights:
      (1) opportunity to be heard (and not just by written protest because many can't write).
      (2) timely and adequate notice.
      (3) opportunity to defend.
      (4) confrontation of witnesses.
      (5) right to impartial decision maker, not the caseworker.
      (6) right to an attorney.
      (7) means by which to live while he waits.
   c. Burden on proceeding:
      (1) greater expense because of hearing requirement before termination.
      (2) benefits paid ineligible recipients while waiting for hearing probably is not

    recoverable because the recipients are likely to be judgment-proof.
  - (3) to no longer require protests to termination be made in writing, causes more time to be wasted.
  - (4) must have someone other than the caseworker who terminates payments to review the case and hold hearing.
- d. Outcome: The nature of the rights are of overriding concern.

VII. CASE STUDY — WHAT IF YOU WERE THE U. S. SUPREME COURT? (open-ended discussion question)

A. RSMo 167.161 and 167.171 deal with the substantive and procedural due process required by the Missouri legislature before a student may be expelled or suspended from a public school.

167.161 SUSPENSION OR EXPULSION OF PUPIL — NOTICE — HEARING
The school board of any district, after notice to parents or others having custodial care and a hearing upon charges preferred, may suspend or expel a pupil for conduct which is prejudicial to good order and discipline in the schools or which tends to impair the morale or good conduct of the pupils. At the hearing the board shall consider the evidence and statements that the parties present and may provide by general rule not inconsistent with this section for the procedure and conduct thereof. (L. 1963, p. 278 Sec. 8-16)

167.171 SUMMARY SUSPENSION OF PUPIL — APPEAL
The board of education in any district, by general rule and for the causes provided in section 167.161, may authorize the summary suspension of pupils by principals of schools for not to exceed ten days and by the superintendent of schools for not to exceed ninety school days. In case of a suspension by the superintendent for more than ten days, the pupil or his parents or others having his custodial care may appeal the decision of the superintendent to the board. Any suspension by a principal shall be immediately reported to the superintendent who may revoke the suspension at any time. In event of an appeal to the board, the superintendent shall promptly transmit to it a full report in writing of the facts relating to the suspension, the action taken by him and the reasons therefor and the board, upon request, shall grant a hearing to the appealing party to be conducted as provided in section 167.171. Amended by Laws 1969, p. 274, Sec. 1, effective April 3, 1969; Laws 1973, p: , H.B. No. 158, Sec. 1, effective July 1, 1974. (For text of section 167.171 as amended by Laws 1969, p. 274, Sec. 1, see Sec. 167.171, ante. See Historical Note under Sec. 167.011 for scope of 1973 Laws affecting this section.)

B. Queries for teachers who are making analysis as U. S. Supreme Court Justices.

1. Is there "state action" when a student is suspended or expelled from a public school? from a private school?

2. Do you think that the U. S. Supreme Court would require more formal or extensive procedures, or do you think that those set out by the statute are sufficient to pass U.S. Constitutional muster? Why?

3. No mention is made of legal counsel for the suspended or expelled student at the board of education hearing. Should one be required? Should one be allowed?

VIII. THE BILL OF RIGHTS IN CRIMINAL CASES

GOAL: This chapter is designed to acquaint the teachers with the philosophical reasons for the protections of the Bill of Rights and the basic philosophy of criminal law.

I. WHAT IS CRIME? (discussion question)

A. A crime can be defined as an act or the commission of an act that is forbidden or the omission of a duty that is commanded by a public law and that makes the offender liable to punishment by that law.

B. How are crimes classified?

1. misdemeanors

2. felonies

The fundamental difference is in the kind and degree of punishment. For example, a misdemeanor is punishable by a fine and/or up to one year imprisonment. A felony is punishable by a fine and/or more than one year in prison or even death (if the bill passes the legislature).

II. WHAT IS THE ROLE OF CRIMINAL LAW IN A FREE SOCIETY? (discussion question)

A. It sets minimum standards of conduct for the members of society.

B. It sets out the sanctions to be applied to behavior which does not comply with the minimum standards set.

III. CRIME PREVENTING AND PERSONAL LIBERTY

A. Crime has been increasing for more than a decade.

1. The number of residential burglaries alone rose by 197% between 1960 and 1969. During that same period almost 5 million crimes of all types were reported each year.

2. It is estimated that an equal number went unreported.

3. Young people in the 12 to 19 years of age group were found to report even less crime than their elders. According to a Law Enforcement Assistance Administration victimization study recently completed, teenagers report only 30% of crimes committed. Thus, in 7 out of 10 instances teenagers do not report crimes against themselves and others.

B. How can we restore confidence in the criminal justice system and increase citizen involvement? (discussion question) How can this be done without jeopardizing the protection and freedom of the individual from overzealousness of the government?

C. Basic protections for citizens are set out in the constitution. Underlying the protections set out in the constitution are these ideas, among others:

1. The individual has a right to be treated fairly.

2. All citizens should be treated equally.

3. Individuals have a right to be left alone, a right to be free from excessive governmental intrusion into an individual's everyday affairs, i.e., a right to privacy.

4. The public or society should be aware of what's happening in the courts and should have some input into the operation of the criminal law system.

5. Individuals should be protected from overzealousness and abuses of power by government enforcers of the law.

6. Individuals are human beings possessing a certain human dignity. Hence, individuals should not have to testify against themselves or be subject to cruel or unusual punishment.

7. It is better that ten criminals go free than one innocent man be wrongfully punished.

IV. LIMITATIONS ON SUBSTANTIVE CRIMINAL LAWS.

A. Notice and fair warning.

1. Notice — Laws can only be applied prospectively. A man can't be punished for an action that was legal when he did it but later became proscribed conduct under a statute, i.e., ex post facto.

2. Fair Warning — If a criminal law is so vague that an individual of average intelligence cannot understand it then it is unconstitutional to enforce it. It will be found "void for vagueness" by the Supreme Court. For example, vagrancy statutes are being struck down.

3. Both of the above ideas lend themselves to easy illustration to school children.

a. Punishing someone or the class for breaking a rule created by the teacher after the fact.

    b. Making a rule or rules as to a classroom activity or classroom conduct that is so vague that no one knows what the proscribed conduct or required conduct is.

B. Status Criminality — Robinson v. California, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed. 2d 758 (1962).

  1. The main idea is that if you punish a person for "what" he is rather than what he does, it is cruel and unusual punishment.

  2. While laws may be made to punish a drug addict for possessing heroin or for using it, they can't be made to punish a person for simply being an addict. The same goes for alcoholics.

  3. A good way of illustrating this to schoolchildren would be to allow all the girls to go to recess while the boys must remain seated as punishment. When they ask, tell them they are being punished because they are boys.

C. Personal guilt and the concept of criminality.

  1. This idea is very similar to status criminality.

  2. The idea of personal guilt and criminality is based on the thoughts that:

    a. each person is to be treated a human being of average intelligence.
    b. as such, each person has a certain standard to live up to.
    c. each person has the power to make a choice as to whether to do right or wrong.

  3. If a person is incapable of making a choice between right and wrong he should not be punished. He is incapable of a criminal act. For example:

    a. A person who is mentally diseased such that he cannot choose between right and wrong is not punished. It should be noted that few are found to be legally insane so as to excuse them. Far more mentally-ill people are found guilty than are found innocent.
    b. An epileptic during a seizure is unconscious and incapable of choice between right and wrong. Hence, you cannot punish an epileptic for what he does during a seizure. An exception could be where he puts himself in a position to do harm to others before a seizure, knowing he is subject to seizures and knowing that he will probably hurt someone if he has a seizure.

D. Public welfare laws.

  1. Some crimes do not require a knowledge of having done something wrong. This is because the activity if done improperly will be so harmful to the public that this overrides any consideration of knowledge of the wrongdoing.

  2. An example would be manufacturing and selling a poison that is mislabeled as a medicine.

V. LIMITATIONS ON CRIMINAL PROCEDURE.

A. The theoretical basis of the rights of an accused go back to the Magna Carta, as discussed in the session on Due Process of Law.

B. Some procedures and procedural protections are specifically set out in the Constitution. Others have developed as a result of the Supreme Court's interpretation of the Constitution.

C. These protections apply to the states as well as the federal government.

D. The rights of an accused.

1. Formal charge of a crime — Amendment V

   a. Informs the accused of the nature of his offense, and the specific crimes he is alleged to have committed.
   b. Allows the defendant to prepare a defense to the specific charges.

2. Freedom from double jeopardy — Amendment V

   Once acquitted of a crime a person cannot be tried again for that crime. This protects a person from being brought before the court continually until a jury is found that will convict him.

3. Right to a speedy and public trial — Amendment VI

   a. But not a trial by newspaper.
   b. Case study — Sheppard v. Maxwell, 384 U. S. 333, 86 S.Ct. 1507, 16 L.Ed. 2d 600 (1966).

      (1) Facts:

      "Murder and mystery, society, sex and suspense were combined in this case in such a manner as to intrigue and captivate the public fancy to a degree perhaps unparalleled in recent annals. Throughout the preindictment investigation, the subsequent legal skirmishes and the nine-week trial, circulation-conscious editors catered to the insatiable interest of the American public in the bizarre . . . . In this atmosphere of a 'Roman holiday' for the news media, Sam Sheppard stood trial for his life."

      Marilyn Sheppard, petitioner's pregnant wife, was bludgeoned to death in the upstairs bedroom of their home in a Cleveland suburb. From the outset officials focused suspicion on Sheppard. From the day of his wife's funeral, headline stories repeatedly stressed Sheppard's lack of cooperation, such as his refusal to take a lie detector test, and complained about the "protective ring" thrown up by his prominent family.

Apparently proded by newspaper editorials, the coroner subpoenaed Sheppard and staged a three-day inquest in a school gymnasium. The proceedings were broadcast live. In the presence of a swarm of reporters and photographers, Sheppard was questioned for 5 1/2 hours about his actions on the night of the murder, his married life and a love affair with his nurse. Sheppard's lawyer was present during the inquest, but not allowed to participate. When the lawyer attempted to place some documents in the record, he was forcibly ejected from the room by the coroner, who received cheers, hugs, and kisses from ladies in the audience.

During the month between his wife's slaying and Sheppard's arrest for her murder the newspapers underscored evidence that tended to incriminate him and pointed out discrepancies in his statements to authorities. At the same time, Sheppard made many public statements to the press and wrote feature articles asserting his innocence. During the 18 days between Sheppard's arrest and his indictment, the publicity grew in intensity.

The case came on for trial two weeks before the November general election at which the chief prosecutor was a candidate for municipal judge and the presiding judge was a candidate to succeed himself. The nine-week trial received massive coverage. A temporary table, running the width of the courtroom, was set up **inside** the bar, in back of the single counsel table. About 20 news media representatives were assigned seats at this table by the court. The movement of reporters in and out of the courtroom often caused so much confusion that, despite the installation of a loud speaker system, it was difficult for the witnesses and counsel to be heard. Sheppard and his counsel frequently had to leave the courtroom to talk confidentially. On the sidewalk and steps in front of the courthouse and in the corridors outside the courtroom, were many photographers and TV personnel who photographed prospective jurors during the selection of the jury and then participants in the trial itself.

Much of the material printed or broadcast during the trial was never heard from the witness stand, such as the charges that Sheppard had purposely impeded the murder investigation and must be guilty because he had hired a prominent criminal lawyer; the report that a cousin of Marilyn would testify that, as the defendant's wife had told friends, Sheppard was a "Dr. Jekyll and Mr. Hyde" character (no such witness appeared); a police captain's press statement, in response to Sheppard's claims of police mistreatment, that the defendant was a "bare-faced liar" (the captain never appeared as a witness); broadcaster Robert Considine's likening of Sheppard to Alger Hiss in the latter's confrontation with Whittaker Chambers; and broadcaster Walter Winchell's report that a woman convict had stated that, as the defendant's mistress, she had borne him a child. This deluge of publicity during the trial reached at least some of the jury. On the only occasion that the jury was queried about these reports, two jurors admitted that they had heard the Winchell broadcast.

After the case was submitted to the jury, it was sequestered at a hotel for its deliberations, which took five days and four nights. Although the telephones had been removed from the jurors' rooms they were permitted to use the phones in the bailiffs' rooms to make telephone calls, placing the calls themselves. No record was kept of the jurors who made calls or the numbers or parties called. The court had not instructed the bailiffs to prevent such calls.

(2) Decision:
The Court, per J. Clark, held:

(a) The arrangements made by the trial judge with the news media caused Sheppard to be deprived of that judicial serenity and calm to which he was entitled.

(b) The judge should have adopted stricter rules governing the use of the courtroom by the news media. He should have limited the number of newsmen at the first sign of disruption and should not have allowed them inside the bar.

(c) The court should have insulated the witnesses.

(d) The court should have made some attempt to control the release of leads, information and gossip to the press by police officers, witnesses, and the counsel on both sides.

(e) Reporters who wrote or broadcast prejudicial stories should have been warned of the impropriety of publishing material not introduced in the proceedings.

(f) Where there is a reasonable likelihood that prejudicial news prior to trial will prevent a fair trial, the judge should continue (postpone) the case until the threat abates.

(g) If the publicity during the proceedings threatens the fairness of the trial, a new trial should be ordered.

4. Right to a trial by jury — Amendment VI.

   a. Should this be a right in all cases, no matter how petty the crime?
   b. Jury should be of peers, i.e., should be unbiased and properly selected.

5. Right to confront witnesses and have compulsory court process over his own witnesses — Amendment VI.

   a. If a person doesn't know his accusers and can't confront them, he can't show bias or weaknesses in their testimony.
   b. Some people, either because of fear or revulsion to publicity would not testify if the defendant did not have the right to subpoena them.

6. Right to counsel — Amendment VI.

   a. This is so important that the court has said that when the individual cannot afford legal counsel one must be appointed (not so often as people may think).
   b. Supreme Court has found that right to counsel begins when the proceeding becomes accusatory.

7. Freedom from excessive bail and cruel and unusual punishment — Amendment VIII

   a. Some crimes are of such a nature that the accused is not a threat to society. His return to society allows him to continue the support of his family, and continue in his job while he awaits trial on what may prove an unfounded charge.
   b. What is cruel and unusual?
      The Supreme Court has decided that juries being allowed to give the death penalty without guidance is cruel and unusual. A bill before the Missouri legislature was passed in 1975 to reinstate the death penalty in certain specific instances.

8. Freedom from self-incrimination — Amendment V.

   a. The government must prove its case by methods other than extracting confessions from an accused.
   b. An accused need not testify at trial and his refusal to testify should not cause a jury to draw any inference of guilt. But do they? (discussion question)

9. Protection against unreasonable searches and seizures — Amendment IV

   a. Necessity of a warrant except in special circumstances.
   b. The warrant process:
      (1) for arrest — must show cause why person should be arrested. An exception where the policeman views the crime, etc.
      (2) for search — must show cause why search necessary, who or what is to be searched, and what is being searched for.
      (3) application made to a judge who rules on whether a warrant should be issued.
   c. The Supreme Court is now finding searches reasonable that had not been considered so in the past. This reflects the tipping of the balance in favor of the protection of society as opposed to those ideals upon which the Constitutional protections are based. It is also helping police to know exactly what conduct on their part will be allowed or disallowed.
      Case study — U. S. v. Robinson 72-936, 42 L.W. 4055 (1973).
      (1) Facts:
      On April 23, 1968, at approximately 11 o'clock p.m., Officer Richard Jenks, a 15-year veteran of the District of Columbia Metropolitan Police Department, observed Willie Robinson, Jr., driving a 1965 Cadillac near the intersection of 8th and C Streets, Southeast, in the District of Columbia. Jenks, as a result of previous investigation, following a check of Robinson's operator's permit four days earlier, determined there was reason to believe that Robinson was operating a motor vehicle after the revocation of his operator's permit. This is an offense defined by statute in the District of Columbia which carries a mandatory minimum jail term, a mandatory minimum fine, or both. 40 D.C. Code Sec. 302(d).

      Jenks signaled Robinson to stop the automobile, which respondent did, and all three of the occupants emerged from the car. At that point Jenks informed Robinson that he was under arrest for "operating after revocation and obtaining a permit by misrepresentation". It is conceded by Robinson here, that Jenks had probable cause to arrest respondent, and that he effected a full custody arrest.

In accordance with prescribed police procedures, the arresting officer made a search of Robinson. In the course of the search the officer found a cigarette package containing heroin in Robinson's inside coat pocket.

The heroin was admitted into evidence at the trial level and Robinson was convicted of a drug offense.

(2) Issue and decision:

Was there a lawful search? In the case of a lawful custodial arrest, a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a "reasonable search" under that Amendment.

(b) Issue and decision:

Was there a lawful search? In the case of a lawful custodial arrest, a full search of the person is not only an exception to the warrant requirement of the Fourth Amendment, but is also a "reasonable search" under that Amendment.

d. At present, the remedy of the accused for illegal searches and seizures is the "exclusionary rule". This rule disallows the use of illegally seized evidence and evidence obtained as a result of illegal police action ("fruit of the poisonous tree") from being used against an accused. Chief Justice Burger has espoused the adoption of the English method of dealing with the illegally seized evidence problem, i.e., allow the evidence to be used, but give the accused the right to sue the policeman for damages incurred by the illegal acts.

VI. THE VALUE AND COST OF PROTECTIONS OF THE ACCUSED.

A. Value — see IIIc.

B. Cost — less efficient law enforcement.

C. The question for the people and the Supreme Court is what balance should be struck between the competing interests.

IX. THE BILL OF RIGHTS AND INDIVIDUAL CIVIL LIBERTIES

GOAL: *This chapter is designed to show the individual civil liberties guaranteed by the Constitution and, equally important, the civic responsibilities that accompany civil liberties.*

INTRODUCTION

A. When we speak of civil rights and individual liberties we tend to speak in terms of absolutes. Either people have them or they don't. This is really not the case. Every country allows some rights and liberties even if they are not set out in some document. On the other hand, no country regardless of whether specific rights are written down allows absolute or unlimited freedom. This includes the United States.

B. The best way to find what our freedoms are is to look to the Constitution. The best way to find what the limitations are on those freedoms is to look to court decisions.

I. THE FIRST AMENDMENT.

A. Freedom of Religion.

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ."

B. Establishment Clause.

1. Some countries have official religions. Examples: Spain, Catholic; England, Church of England; Israel, Judaism; Arabian Countries, Moslem.

2. Constitution does not allow the Congress to establish an official religion.

3. Tax support of religious organizations is prohibited also. This reflects the feelings of early Americans. Thomas Jefferson said:

". . . to compel a man to furnish contributions of money for the propogation of opinions which he disbelieves . . . is sinful and tyrannical; that even the forcing him to support this or that teacher of his his own religious persuasion, is depriving him of the comfortable liberty of giving his contributions to the particular pastor (of his choice)." — Virginia Bill for Religious Liberty

4. How does this clause affect the aid to private and parochial schools?

   Parochial schools save the taxpayers a lot of money. Should they be paid back some of this savings? (discussion question)

5. Can this clause explain why the churches are not taxed? (discussion question)

   In general, church property is not taxes unless it is income producing property: i.e., indirect taxes on religion are allowable.

6. Some examples of questions that have come before the courts under the Establishment Clause.

   a. What would happen if a state passed a law that said that **all** parents should be paid back for bus fares paid for the transportation of children in school where the public school does not provide transportation? Should the parents of parochial school children also be paid back? (discussion question) The Supreme Court has said:

      "The state contributes no money to the schools. It does not support them. Its legislation, as applied, does no more than provide a general program to help parents get their children, regardless of their religion, safely and expeditiously to and from accredited schools.

      "The First Amendment has erected a wall between church and state. That wall must be kept high and impregnable. We could not approve the slightest breach. New Jersey has not breached it here." Everson v. Board of Education of Township of Ewing, 330 U.S. 1 (1947)

   b. Can public school facilities be used for religious instruction? (discussion question)

      No, held the Supreme Court. It violates the establishment clause. McCollum v. Board of Education, 333 U.S. 203 (1948)

   c. Can children be released from public schools to attend religious classes held elsewhere? (discussion question)

      Yes, held the Supreme Court. Justice Douglas said in part:

      "When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions . . . Government may not finance religious groups nor undertake religious instruction nor use secular institutions to force one or some religion on any person. But we find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence." Zorach v. Clauson, 343 U.S. 306, 313 (1952)

d. Direct reimbursement of a parochial school for non-religion teachers' salaries and for secular textbooks is unconstitutional because of "excessive government entanglement with religion." Lemon v. Kurtzman, 403 U. S. 602 (1971). Indirect aid to the schools through the reimbursement of the children or their parents is allowable, e.g., school lunch programs, textbook reimbursement, health services.

e. Can a state compose an official prayer and require the recitation of it? (discussion question)

New York tried: "Almighty God, we acknowledge our dependence upon thee and we beg Thy blessings upon us, our parents, our teachers and our country." Justice Black, speaking for the Supreme Court, said that this is contrary to the First Amendment in two ways: First, it secularizes a religious practice which for many people is so sacred that it should be confined to the privacy of one's home or place of worship; Second, that all children should be required to say the prayer smacks of religious persecution or intolerance. "The New York laws officially prescribing the Regents' prayer are inconsistent with the purposes of the Establishment Clause and with the Establishment Clause itself." Engle v. Vitale, 370 U.S. 421, 433 (1962)

f. Must churches get a merchant's license or peddler's license to sell religious objects? (discussion question)

No. Murdock v. Pennsylvania, 319 U.S. 105, 63 S.Ct. 870, 87 L.Ed. 1292 (1943) and Follett v. McCormick, 321 U.S. 573, 64 S.Ct. 717, 88 L.Ed. 938 (1944).

C. Free Exercise Clause.

Is there an absolute freedom to exercise religion? Is there any legal difference in believing something and putting that belief into practice? Can a man violate laws on the basis of religious freedom? When does a law become unconstitutional because it violates a man's religious freedom? (discussion question)

1. *Belief v. Practice*. Prior to 1890, the Mormons practiced polygamy. This was a crime in the territory of Utah where most Mormons lived. George Reynolds, a Mormon, married a second wife and was prosecuted. Was the law passed by Congress unconstitutional because it prohibited the free exercise of Reynolds's religion? The Supreme Court held No. Chief Justice Waite gave the opinion of the Court. In part, he said:

"... Laws are made for government (control) of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices. Suppose one believed that human sacrifices were a necessary part of religious worship...? Or if a wife regligiously believed it was her duty to burn herself upon the funeral pyre of her dead husband . . .? . . . Can a man excuse his practices because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself . . ." Reynolds v. United States, 98 U.S. 145 (1879)

2. *A state Sunday closing law* is not unconstitutional when applied to against those whose religious convictions prevent them from working on Saturday as well. Such laws result only in an indirect burden on the exercise of freedom of religion and do not violate the First Amendment. Braunfeld v. Brown, 366 U.S. 599 (1961).

3. *Can a taxpayer refuse to pay school taxes because he needs the money to send his children to a private or parochial school? Violative of free exercise clause?* (discussion question)

   No, says the Missouri Supreme Court.

   > ". . . It is true that the payment of school taxes will decrease the amount of money available to plaintiff for his other expenses, including the cost of sending his children to private schools. However, all other taxes, including income taxes, produce the same result. If plaintiff's theory is valid, then all taxes would be unconstitutional." McDonough v. Aylward, 57,003 (Mo. S.Ct., 10/8/73) (Decision based on First and Fourteenth Amendments and Article 9, Section 8, Missouri Constitution)

II. FREEDOM OF SPEECH AND PRESS.

A. Every country has **some** freedom of speech. But, in no country is there an absolute right to say **any**thing at **any** time in **any** place.

B. The First Amendment says:

"Congress shall make no law . . .abridging the freedom of speech, or of the press; or of the right of the people peacefully to assembly, and to petition the Government for a redress of grievances."

1. Does not limit individuals from impinging on freedom of speech. Applies to the government.

2. Applies to the states through the Fourteenth Amendment.

C. Some reasons why freedom of speech is a good idea:

1. an aid to intelligent choice between alternatives or conflicting ideas.

2. causes new ideas to be developed to meet changing situations or needs of society.

3. serves as an outlet for resentment or hostilities that might find more dangerous expression through violence, etc.

D. What is "freedom of speech"? (discussion question)

1. Dates back as far as ancient Athens — in the Fifth Century B.C.

2. Freedom of speech in England at the time of the adoption of the U. S. Constitution can be exemplified by the writings of Blackstone, the famous English lawyer. He wrote in 1765:

   "Liberty of the press . . . consists in laying no previous restraint upon publications . . ."

Thus his concept was that freedom of expression protects a person from prior restraint or censorship. The government could not keep a man from communicating ideas but this did not prevent them from punishing a person for what he said AFTER he said it.

This did not mean that there could **never** be prior restraint. It was acknowledged that there was a responsibility to society not to injure itself. For example, during wartime the government was thought to have a limited right to censor what was published.

3. These two ideas are still today basic to freedom of expression.
   Near v. Minnesota, 283 U.S. 697, 51 S.Ct. 625, 75 L.Ed. 1357 (1931) and
   Schenck v. United States, 249 U.S. 47, 39 S.Ct. 247, 63 L.Ed. 470 (1919).

E. Prior restraint v. subsequent punishment.

Is subsequent punishment "closing the barn door after the horse has run away"? What about in relation to pornography? Was it the kind of speech intended to be protected by the founding fathers? (discussion question)

1. Public officials would tend to suppress rather than allow a writing contrary to public opinion be published fearing adverse political reaction.

2. Public officials would tend to suppress any work criticizing the government.

3. Subsequent punishment allows the work to become public so that society can see if the government is overstepping its bounds.

F. Limitations on free expression can usually be fit into three categories:

1. Cases where the government may require a person to say **only** the truth or to reveal the **whole** truth. For example:

   a. Defamation (criminal and civil) (See below)
   b. Sale of food (the contents)
   c. Sales of stocks and products

2. Cases where the expression is an incitement to crime. For example:

   a. Incite to action in overthrow of the government by force. (See below)
   b. Incite to action in killing all policemen.

3. Cases where expression is not an incitement to crime but is disturbing to the community. For example:

   a. Yelling fire in a crowded theater. (Justice O. W. Holmes)
   b. Using fighting words. (See below)
   c. Disrupting traffic. Cox v. New Hampshire, 312 U.S. 569, 61 S.Ct. 762, 85 L.Ed. 1049 (1941)

d. Using a soundtruck in a residential area. Kovacs v. Cooper, 336 U.S. 77, 69 S.Ct. 448, 93 L.Ed. 513 (1949)

e. Pornography. June 31, 1973 — Miller v. California, 41 LW 4925 (1973) — Adult Theater I v. Slaton, 41 LW 4935 (1973)

f. Disrupting judicial administration. Wood v. Georgia, 370 U.S. 375, 82 S.Ct. 1364, 8 L.Ed. 2d 569 (1962) (Sheriff can't be held in contempt for expressing his personal opinions on matters before a grand jury.) Cox v. Louisiana, No. 49, 379 U.S. 559, 85 S.Ct. 476, 13 L.Ed. 2d 487 (1965) (Courthouse picketing.) Shepherd v. Maxwell, 384 U.S. 333, 86 S.Ct. 1507, 16 L.Ed. 2d 600 (1966) (Pretrial publicity.)

g. Disrupting education processes. See below.

G. A close look at some decisions of the Supreme Court will show that they are constantly balancing the freedom of the individual against the valid interests of the majority in deciding if there should be limitation on Free Speech. Examples:

1. In the first category the example was given as to defamation. "Defamation" is defined in Black's Law Dictionary as:

"The taking from one's reputation. The offense of injuring a person's character, fame or reputation by false and malicious statements. The term seems to include both libel and slander."

a. *In Beauharnais v. Illinois, 343 U.S. 250, 72 S.Ct. 725, 96 L.Ed. 919 (1952), the Supreme Court held that libelous utterances are not within the area of constitutionally protected speech.* They did so in sustaining a state statute prohibiting

"... the manufacturing, publishing or exhibition in any public place of any publication portraying 'depravity, criminality, unchasity, or lack of virtue of a class of citizens, of any race, color, creed or religion (which exposes such citizens) to contempt, derision or obloquy or which is productive of breach of the peace or riots ...' Petitioner was convicted of violating the statute for having organized the distribution of a leaflet which, inter alia, petitioned the Mayor and City Council of Chicago 'to halt the further encroachment, harassment and invasion of white people, their property, neighborhoods and persons by the Negro'; called for 'one million self-respecting white people in Chicago to unite'; and warned that if 'the need to prevent the white race from becoming mongrelized by the Negro will not unite us, then the aggressions ... rapes, robberies, knives, guns and marijuana of the Negro, surely will.' "

"Appellant argues, inter alia, that Illinois denied him his constitutional rights by not permitting him to raise the defense of truth and by refusing to charge the jury that in order to convict they must find the leaflet 'was likely to produce a clear and present danger of a serious substantive evil that arises far above public inconvenience, annoyance or unrest.'

"The Court, per Frankfurther, J., affirmed the conviction, recalling the language in Chaplinsky v. New Hampshire, 315 U.S. 568, to the effect that the 'prevention and punishment' of 'the lewd and obscene, the profane, the libelous, and the insulting of "fighting" words' have 'never been thought to raise any Constitutional problem.' "

". . .Illinois did not have to look beyond her own borders or await the tragic experience of the last three decades to conclude that willful purveyors of falsehood concerning racial and religious groups promote strife and tend powerfully to obstruct the manifold adjustments required for free, orderly life in a metropolitan, polyglot community. From the murder of the abolitionist Lovejoy in 1837 to the Cicero riots of 1951, Illinois has been the scene of exacerbated tension between races, often flaring into violence and destruction. In many of these outbreaks, utterances of the character here in question, so the Illinois legislature could conclude, played a significant part."

The Court noted that it could be argued that "the rantings of modern know-nothings" may not be the cause of racial and religious based violence. But, the legislature could reasonably conclude that it was related to the problem.

". . . Libelous utterances not being within the area of constitutionally protected speech, it is unnecessary, either for us or for the State courts, to consider the issues behind the phrase 'clear and present danger.' Certainly no one would contend that obscene speech, for example, may be punished only upon a shoring of such circumstances. Libel, as we have seen, is in the same class."

(Beauharnais evoked four separate dissenting opinions.)

b. *New York Times v. Sullivan, 376 U.S. 255, 84 S.Ct. 710, 11 L.Ed. 686 (1964), involving a suit against the New York Times and four Negro clergymen by one of three elected Commissioners of the City of Montgomery, Alabama, alleging he had been libeled by statements in a full-page advertisement entitled "Heed Their Voices"*. Accepting that the statements were untrue and could be taken as referring to the Plaintiff, the Court said:

"Erroneous statement is inevitable in free debate, and . . . it must be protected if the freedoms of expression are to have the 'breathing space' that they need to survive . . . a rule compelling the critic of official conduct to guarantee the truth of all his assertions — and to do so on pain of libel judgments virtually unlimited in amount — leads to a comparable 'self-censorship'.

". . .Under such a rule would-be critics of official conduct may be deterred from voicing their criticism, even though it is believed to be true and even though it is in fact true, because of doubt whether it can be proved in court or fear of the expense of having to do so . . .

"The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages from a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice' — that is, with knowledge that it was false or with reckless disregard of whether it was false or not."

c. *Application of* Times *standard to public communication by school teachers. Pickering v. Board of Education, 391 U.S. 563, 88 S.Ct. 1731, 20 L.Ed. 2d 811 1968):* An Illinois public high school teacher, dismissed for writing a letter to a local newspaper which was critical of the school board's handling of financing, successfully invoked the Times standard. The Court, per Marshall, J., observed that school financing was the "subject of public attention". The statements did not impede "the teacher's proper performance of his daily duties in the classroom or . . . with the regular operation of the schools generally".

"In these circumstances we conclude that the interest of the school administration in limiting teachers' opportunities to contribute to public debate is not significantly greater than its interest in limiting a similar contribution by any member of the general public.

"Were appellant a member of the general public, the State's power to afford the appellee Board of Education or its members any legal right to sue him for writing the letter at issue here would be limited by the requirement that the letter be judged by the standard laid down in Times.

"In a case such as the present one, in which the fact of employment is only tangentially and insubstantially involved in the subject matter of the public communication made by a teacher, we conclude that it is necessary to regard the teacher as the member of the general public he seeks to be.

"In sum, we hold that, in a case such as this, absent proof of false statements knowingly or recklessly made by him, a teacher's exercise of his right to speak on issues of public importance may not furnish the basis for his dismissal from public employment. Since no such showing has been made in this case regarding appellant's letter, his dismissal for writing it cannot be upheld . . ."

2. An example of a case in the second category (see "F" above) would be Dennis v. United States, 341 U.S. 494, 71 S.Ct. 857, 95 L.Ed. 1137 (1951). Petitioners were indicted in July, 1948, for violation of the conspiracy provisions of the Smith Act during the period of April, 1945, to July, 1948. The Smith Act provides:

"Section 2.
a. it shall be unlawful for any person —
  (1) to knowingly or willfully advocate, abet, advise, or teach the duty, necessity, desirability, or propriety of over-throwing or destroying any government in the United States by force or violence, or by the assassination of any officer of any such government: . . .
"Section 3.
a. It shall be unlawful for any person to attempt to commit, or to conspire to commit, any of the acts prohibited by the provisions of . . . this title."

The Court's opinion was:

"The obvious purpose of the statute is to protect existing Government, not from change by peaceable, lawful and constitutional means, but from change by violence, revolution and terrorism . . . Whatever theoretical merit there may be to the argument that there is a 'right' to rebellion against dictatorial governments is without force where the existing structure of the government provides for peaceful and orderly change. We reject any principle of governmental helplessness in the face of preparation for revolution, which principle, carried to its logical conclusion, must lead to anarchy. No one could conceive that it is not within the power of Congress to prohibit acts intended to overthrow the Government by force and violence. The question with which we are concerned here is not whether Congress has such **power,** but whether the **means** which it has employed conflict with the First and Fifth Amendments to the Constitution . . .

"One of the bases for the contention that the means which Congress has employed are invalid takes the form of an attack on the face of the statute on the grounds that by its terms it prohibits academic discussion of the merits of Marxism-Leninism, that it stifles ideas and is contrary to all concepts of a free speech and a free press.

"The very language of the Smith Act negates the interpretation which petitioners would have us impose on that Act. It is directed at advocacy, not discussion . . .

". . . In this case we are squarely presented with the application of the 'clear and present danger' test, and must decide what that phrase imports. We first note that many of the cases in which this Court has reversed convictions by use of this or similar tests have been based on the fact that the interest which the State was attempting to protect was itself too insubstantial to warrant restriction of speech . . . Overthrow of the Government by force and violence is certainly a substantial enough interest for the Government to limit speech . . . If, then, this interest may be protected, the literal problem which is presented is what has been meant by the use of the phrase 'clear and present danger' of the utterances bringing about the evil within the power of Congress to punish . . .

"Chief Judge Learned Hand, writing for the majority below, interpreted the phrase as follows:

> 'In each case (courts) must ask whether the gravity of the "evil", discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger.'

"We adopt this statement of the rule . . . Likewise, we are in accord with the court below, which affirmed the trial court's finding that the requisite danger existed."

3. In the third category (see "F" above) is given the example of "fighting words". The general rule concerning the use of "fighting words" is set out in the case of Chaplinsky v. New Hampshire, 315 U.S. 568, 62 S.Ct. 766, 88 L.Ed. 1031 (1942). In this case the defendant called a city marshall a "damned rackateer" and a "damned Fascist". A unanimous Court upheld a statute forbidding a person from addressing "any offensive, derisive or annoying word to any other person who is lawfully in any public place," as construed by the state court to prohibit "words likely to cause an average addressee to fight."

a. The Court did not reach the question of "fighting words" in the case of a hate speech in Terminiello v. Chicago, 337 U.S. 1, 69 S.Ct. 894, 93 L.Ed. 1131 (1949).

"There, petitioner 'vigorously, if not viciously' criticized various political and racial groups and condemned 'a surging, howling mob' gathered in protest outside the auditorium in which he spoke. He called his adversaries 'slimy scum', 'snakes', 'bedbugs', and the like. Those inside the hall could hear those on the outside yell, 'Fascists, Hitlers!' The crowd outside tried to tear the clothes off those who entered. Approximately 28 windows were broken and stink bombs were thrown. But in charging the jury, the trial court defined 'breach of the peace' to include speech which 'stirs the public to anger, **invites dispute,** (or) brings about a condition of unrest (emphasis added)."

A 5-4 majority, per Douglas, J., struck down the breach of peace ordinance as construed.

"A function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger . . . That is why freedom of speech, though not absolute, Chaplinsky, is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest."

b. The next case shows how the Court balances the right of the individual to express himself and the valid interest of the majority in keeping public order. (The case is one frequently found in Civics books.) The dissenting opinions point out that the Justices of the Supreme Court do not always agree as to which way the balance should tilt in a given fact situation. Feiner v. New York, 340 U.S. 315, 71 S.Ct. 303, 95 L.Ed. 295 (1951):

"Petitioner made a speech on a street corner in a predominantly Negro residential section of Syracuse, New York. A crowd of 75 to 80 persons, Negro and white, gathered around him, and several pedestrians had to go into the highway in order to pass by. A few minutes after he started, two police officers arrived and observed the rest of the meeting . . . Petitioner referred to the President as a 'bum', to the American Legion as 'a Nazi Gestapo', and to the Mayor of Syracuse as a 'champagne-sipping bum' who 'does not speak for the Negro people' He also indicated in an excited manner: 'The Negroes don't have equal rights; they should rise up in arms and fight for them.'

"These statements 'stirred up a little excitement'. One man indicated that if the police did not get that 'S...O...B...' off the stand, he would do so himself.

"There was not yet a disturbance, but according to police testimony 'angry muttering and pushing . . . After disregarding two requests to stop speaking, petitioner was arrested and convicted of the misdemeanor of disorderly conduct. In affirming the conviction, the Court, per Vinson, C. J., observed:

"The language of Cantwell v. Connecticut is appropriate here . . . No one would have the hardihood to suggest that the principle of freedom of speech sanctions incitement to riot or that religious liberty connotes the privilege to exhort others to physical attack upon those belonging to another sect. When clear and present danger of riot, disorder, interference with traffic upon the public street or other immediate threat to public safety, peace, or order, appears, the power of the State to prevent or punish is obvious.

"It is one thing to say that the police cannot be used as an instrument for the suppression of unpopular views, and another to say that, when as here the speaker passes the bounds of argument or persuasion and undertakes incitement to riot, they are powerless to prevent a breach of the peace . . ."

Dissenting Justice Black contended:

". . . As to the existence of a dangerous situation on the street corner, it seems far-fetched to suggest that the 'facts' show any imminent threat of riot or uncontrollable disorder. It is neither unusual nor unexpected that some people at public street meetings mutter, mill about, push, shove, or disagree, even violently, with the speaker. Indeed, it is rare where controversial topics are discussed that an out-door crowd does not do some or all of these things. Nor does one isolated threat to assault the speaker forebode disorder. Especially should the danger be discounted where, as here, the person threatening was a man whose wife and two small children accompanied him and who, so far as the record shows, was never close enough to petitioner to carry out the threat.

"Moreover, assuming that the 'facts' did indicate a critical situation, I reject the implication of the Court's opinion that the police had no obligation to protect petitioner's constitutional right to talk."

In a separate dissenting opinion, Justice Douglas, joined by Justice Minton, declared:

"A speaker may not, of course, incite a riot any more than he may incite a breach of the peace by the use of 'fighting words'. But this record shows no such extremes. It shows an unsympathetic audience and the threat of one man to haul the speaker from the stage. It is against that kind of threat that speakers need police protection. If they do not receive it and instead the police throw their weight on the side of those who would break up the meetings, the police become the new censors of speech. Police censorship has all the vices of the censorship from city halls which we have repeatedly struck **down**."

4. If the person trying to express himself is not using "fighting words" do the police have a duty to protect the individual from a hostile audience? (discussion question)

Compare Gregory v. Chicago, 394 U.S. 111, 89 S.Ct. 946, 22 L.Ed. 134 (1969) with the Feiner case.

"Accompanied by Chicago police and an assistant city attorney, Gregory and others marched in a peaceful and orderly procession from city hall to the mayor's residence to press their claims for desegration of the public schools. As the demonstrators proceeded, the number of bystanders increased and . . . language and conduct became rougher and tougher. Fearful that the threatening crowd might not be able to be contained much longer, the police asked the marchers to leave the area. They refused and were arrested for violating a 'disorderly conduct' ordinance. In reversing the conviction, the Court observed that **there was no evidence in the record that petitioners' conduct was disorderly. Therefore (under Thompson v. Louisville, 362 U.S. 199, 80 S.Ct. 624, 4 L.Ed. 2d 654 (1960)), convictions so totally devoid of evidentiary support violate due process.**"

Black, J., joined by Douglas, J., concurred in Gregory:

"Both police and demonstrators made their best efforts faithfully to discharge their responsibilities . . ., but they were nevertheless unable to restrain these hostile hecklers within decent and orderly bounds. These facts disclosed by the record point unerringly to one conclusion, namely, that when groups with diametrically opposed, deep-seated views are permitted to air their emotional grievances, side-by-side, on city streets, tranquility and order cannot be maintained even by the joint efforts of the finest and best officers and of those who desire to be the most law-abiding protestors of their grievances . . ."

In agreeing to the reversal of these convictions because the ordinance was overbroad, Black said:

". . . I wish once more to say that I think our Federal Constitution does not render the states powerless to regulate the conduct of demonstrators and picketers, conduct which is more than 'speech', more than 'press', more than 'assembly', and more than 'petition' as those terms are used in the First Amendment. Narrowly drawn statutes regulating the conduct of demonstrators and picketers are not impossible to draft. To say that the First Amendment grants broad rights (to march and demonstrate) free from any exercise of governmental power to regulate conduct, as distinguished from speech, press, assembly, or petition, would subject all the people of the Nation to the uncontrollable whim and arrogance of speakers, and writers, and protesters, and grievance bearers."

5. What about this third category (see "F" above) in relation to the operation of schools?

   a. In Tinker v. Des Moines School District, 393 U. W. 503, 89 S.Ct. 733, 21 L.Ed. 2d 731 (1969), a group of students decided to wear black armbands to protest the Vietnam War. Principals of the Des Moines schools made a regulation that any student who wore an armband must remove it or be suspended until they did. Some students were suspended. There was no disruption when the students wore the armbands. The Supreme Court said neither students nor teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate. And, "Certainly where there is no finding and no showing that the exercise of the forbidden right would 'materially and substantially interfere with the requirements of appropriate discipline in the operation of the school', the prohibition cannot be sustained."

b. Consider in relation to the Gregory case what a federal district court judge said in a Mississippi case.

"In Stacy v. Williams, 306 F. Supp. 963 (N.D. Miss. 1969), the Court struck down a proposed regulation for off-campus speakers at state colleges providing that 'no person shall be permitted to use (state college facilities) **whose presence** will constitute a clear and present danger of inciting a riot on any campus thereof.' (Emphasis by the Court.) Judge Keady observed: 'One simply cannot be restrained from speaking, and his audience cannot be presented from hearing him, unless the feared result is likely to be engendered by what the speaker himself says or does. In such circumstances envisioned by this proposed regulation, attendant law enforcement officers must quell the mob, not the speaker."

III. THE RIGHT TO VOTE. STATES SET VOTING QUALIFICATIONS. IN GENERAL, ANYONE WHO FULFILLS AGE AND COMPETENCY REQUIREMENTS AND HAS NOT BEEN CONVICTED OF A FELONY MAY VOTE. HOWEVER, THIS WAS NOT ALWAYS THE CASE.

A. Women.

It may be interesting to note a Supreme Court case that arose in Missouri. Minor v. Happersett, 21 Wall 162 (1875).
The Missouri Constitution provided: "Every male citizen of the United States . . . shall be entitled to vote." In this respect it was no different than any other state constitution of that period. Mrs. Virginia Minor, president of the Missouri Women's Sufferage Association, attempted to register in St. Louis. She was turned away and brought suit. She based her case on the Fourteenth Amendment's "privileges and immunities" clause claiming that it included the right to vote.

The United States Supreme Court held that the state had the right to exclude women from voting because the United States Constitution left the qualification of voters to the states.

Of course, women were granted the vote in 1920 with the addition of the Nineteenth Amendment to the United States Constitution.

B. Negroes.

Smith v. Allwright, 321 U. S. 649, 64 S.Ct. 757, 88 L.Ed. 987 (1944).

In 1927, the Supreme Court held that a Texas statute barring Negroes from voting in the Democratic party primaries was violative of the "equal protection" clause of the Fourteenth Amendment. Nixon v. Herndon, 273 U.S. 536, 47 S.Ct. 446, 71 L.Ed. 759 (1927).

The Texas Legislature promptly gave the Democratic party's executive committee the power to set qualifications for voters. Negroes were again excluded.

The Supreme Court found that the committee's act of exclusion was "state action" violative of the Fourteenth Amendment. Nixon v. Condon, 286 U.S. 73, 52 S.Ct. 484, 76 L.Ed. 984 (1932)

Then, the state Democratic Convention passed a resolution that all white citizens were eligible for membership and if they joined could vote in the primaries. The Supreme Court upheld this as "private action". Grovey v. Townsend, 295 U.S. 45, 55 S.Ct. 662, 79 L.Ed. 1292 (1935).

This same arrangement was attacked in the Smith case. However, this time the Supreme Court reversed itself and found that the acts of the party convention were "state action" and were violative of the Fifteenth Amendment.

C. Other cases.

Harper v. Virginia Board of Elections, 383 U.S. 663, 86 S.Ct. 1079, 16 L.Ed. 2d 169 (1966). (poll tax)

Williams v. Rhodes, 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed. 2d 69 (1968). (state requirements for gaining a place on the presidential ballot)

IV. OTHER FUNDAMENTAL RIGHTS.

There are other rights which, while not enumerated in the Constitution, emanate from it. As Justice Douglas said in the majority opinion of Griswold, they form a penumbra around the Bill of Rights and help give men life and substance.

"The association of people is not mentioned in the Constitution nor in the Bill of Rights. The right to educate a child in a school of the parents' choice — whether public or private or parochial — is also not mentioned. Nor is the right to study any particular subject or any foreign language. Yet the First Amendment has been construed to include certain of those rights."

Griswold v. Connecticut, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed. 2d 510 (1965).

A. Privacy.

Griswold v. Connecticut, 381 U.S. 479, 85 S.Ct. 1678, 14 L.Ed. 2d 510 (1965). A statute barring the use of contraceptives to prevent conception and one barring counseling or aiding and abetting persons in the use of contraceptives was found unconstitutional. The Majority Opinion, per Douglas, J., stated that "the zone of privacy created by several fundamental guarantees". The opinion also said of privacy:

"Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one, as we have seen. The Third Amendment in its prohibition against the quartering of soldiers 'in any house' in time of peace without the consent of the owner is another facet of that privacy. The Fourth Amendment explicitly affirms the 'right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.' The Fifth Amendment in its Self-Incrimination Clause enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The Ninth Amendment provides: 'The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people'."

B. Education.

"By Pierce v. Society of Sisters, 268 U.S. 510, 45 S.Ct. 571, 69 L.Ed. 1070, the right to educate one's children as one chooses is made applicable to the states by the force of the First and Fourteenth Amendments. By Meyer v. Nebraska, 262 U.S. 390, 43 S.Ct. 625, 67 L.Ed. 1042, the same dignity is given the right to study the German language in a private school. In other words, the State may not, consistently with the spirit of the First Amendment, contract the spectrum of available knowledge. The right of freedom of speech and press includes not only the right to utter or to print, but the right to distribute the right to receive, the right to read (Martin v. Struthers, 319 U.S. 141, 143, 63 S.Ct. 862, 863, 87 L.Ed. 1313) and freedom of inquiry, freedom of thought and freedom to teach (See Wieman v. Updegraff, 344 U.S. 183, 195, 73, S.Ct. 215, 220, 97 L.Ed. 216) — indeed the freedom of the entire university community. Sweezy v. New Hampshire, 354 U.S. 234, 249-250, 261-263, 77 S.Ct. 1203, 1211, 1217-1218, 1 L.Ed. 2d 1311; Barenblatt v. United States, 360 U.S. 109, 112, 79 S.Ct. 1081, 1085, 3 L.Ed. 2d 1115; Baggett v. Bullitt, 377 U.S. 360, 369, 84 S.Ct. 1316, 1321, 12 L.Ed. 2d 377. Without those peripheral rights the specific rights would be less secure."

C. Association.

"In NAACP v. Alabama, 357 U.S. 449, 462, 78 S.Ct. 1163, 1172, The Supreme Court protected the 'freedom to associate and privacy in one's associations, noting that freedom of association was a peripheral First Amendment right. Disclosure of membership lists of a constitutionally valid association, was held invalid . . . In other words, the First Amendment has a penumbra where privacy is protected from governmental intrusion. In like context, The Court has protected forms of 'association' that are not political in the customary sense but pertain to the social, legal and economic benefit of the members. NAACP v. Button, 371 U.S. 415, 430-431, 83 S.Ct. 328, 336-337. While (association) is not expressly included in the First Amendment its existence is necessary in making the express guarantees fully meaningful.

"The foregoing cases suggest that specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance."

D. Travel.

In Aptheker v. Secretary of State, 378 U.S. 500, 84 S.Ct. 1659, 12 L.Ed. 2d 992 (1964), the State Department refused passports to leaders of the American Communist Party based on a statute that disallowed them to travel unless they registered as communists. The Court said:

> "Since 'freedom of travel' is a constitutional liberty closely related to rights of free speech and association, we believe that appellants in this case should not be required to assume the burden of demonstrating that Congress could not have written a statute constitutionally prohibiting their travel."

In Zemel v. Rusk, 381 U.S. 1, 85 S.Ct. 1271, 14 L.Ed. 2d 179 (1965), the State Department refused to issue passports to U. S. citizens for travel to Cuba "unless specifically endorsed (by) the Secretary of State." Zemel wanted a passport to go to Cuba to satisfy his "curiosity about the state of affairs in Cuba and to make (himself) a better informed citizen." The Court, per Warren, C. J., affirmed the denial of his request.

"The right to travel within the United States is, of course, constitutionally protected. But that freedom does not mean that areas ravaged by flood, fire or pestilence cannot be quarantined when it can be demonstrated that unlimited travel to the area would directly and materially interfere with the safety and welfare of the area of the Nation as a whole. So it is with international travel...That the restriction which is challenged in this case is supported by the weightiest considerations of national security is perhaps best pointed up by recalling that the Cuban missile crisis of October, 1962, preceded the filing of appellant's complaint by less than two months."

ANSWERS TO COMMON QUESTIONS ABOUT THE LAW: A RESOURCE FOR THE TEACHER

NOTE: The materials which follow are based partially on materials which were developed by the Kansas City Lawyers' Committee on Urban Affairs and the Volunteers in Education Program for the School District of Kansas City, Missouri.

This guide is intended to give a teacher some basic information about the law but it should be fully appreciated that the information is general and not intended to provide specific answers to specific legal questions. Should specific hypothetical questions arise, you might contact the Missouri Bar or your local Bar Association, but if personal legal problems are involved private legal counsel should be consulted.

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CRIMINAL LAW

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A. Civil: plaintiff — criminal: prosecutor

B. Civil: two private parties — Criminal: government against individual

C. A crime is an offense against the government

D. Different burdens of proof:

1. Civil: Preponderance of the evidence

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E. The purpose of criminal law is a balancing process:

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F. A CRIME represents an individual's act or failure to act which the state or federal legislature (the elected representatives of the people) have prohibited and made punishable by imprisonment and/or fine in order to protect the safety and welfare of society as a whole.

II. A guide to Your Rights When Arrested

NEVER RESIST ARREST — DON'T SAY ANYTHING — DON'T SIGN ANYTHING — KNOW THE CHARGE AGAINST YOU — GET A LAWYER

Even though you may have done nothing unlawful, because of circumstances unknown to you a policeman may be justified in arresting you. As a citizen, it is your responsibility to conduct yourself peaceably, even though you feel the arrest is unjustified. If you are arrested or taken into custody by a police officer for any reason the following advice is for you:

You have important rights when arrested. If the police ignore these rights, the court will still uphold them if you remember these things:

A. NEVER RESIST ARREST. Conduct yourself peaceably even if you feel the arrest is improper. It is foolish and unlawful to try to run away or resist arrest. If you resist, a policeman can hold you by force AND can charge you with an extra crime. Cooperate and KEEP QUIET (anything you say can be used against you). IF YOU KEEP QUIET, IT CAN NOT BE USED AGAINST YOU IN COURT.

B. If you are arrested by a policeman without a warrant, you have the right to be told why you are being arrested. If you are arrested with a warrant, you have the right to read the warrant to make certain it is for you, that it is signed by a judge, and to see the charges against you. You do not have to answer any questions put to you by any police officer or other official. You may tell him that you wish to have your lawyer present before you say anything. Anything you say, whether it is written or not, can be used against you in court. Remember your right to remain silent.

C. While you are under lawful arrest the police have the right to search you and your immediate surroundings. They do not have the right to search your entire home or any other place unless they have a search warrant, and you do not have to consent to such a search. If you consent to a search of any kind, you cannot later claim it was unlawful. Tell the officer that you object to his making the search without a search warrant. If he insists on making the search over your objection, **do not resist him with force.** If you think they are doing something wrong, like if you or your home are messed up, **do not resist with force.** If possible, get a witness to what the police have done. Note the officer's name and badge number so you can complain later on.

D. If you are arrested and taken to the police station, the police have the right to photograph and book you, take your fingerprints and charge you. You may refuse to take a lie detector or truth serum test. You have the right to have an attorney present at any line-up. You have the right to contact a lawyer of your choice or some person who can contact your lawyer or arrange bail. You are not limited to one telephone call, but are permitted a reasonable number in order to contact the proper person.

If you do not have money for a lawyer, the court will appoint a lawyer for you at the arraignment or preliminary hearing. You do not have to say anything to anyone unless you have a lawyer. If you have money for bond, the court may require you to hire a lawyer rather than appoint one.

Tell the police who you are and where you live, but other than this, DON'T SAY ANYTHING. You have a RIGHT TO REMAIN SILENT. The police must tell you of your rights before they ask questions. Remember **whether they do.** They must stop if you don't want to answer anything or if you don't have a lawyer and want one.

E. You have a right to have a lawyer before you are interrogated by the police and if you can't afford one ask that a lawyer be provided for you.

F. If you say something to the police you must be told that the evidence can be used against you.

G. You have a right to be brought before a judge as soon as practicable after your arrest. If you can't go free, you will appear in court the next weekday. You can ask for a delay to get a lawyer to prepare your case. If you don't have one already and the charge is serious, **ask the court to appoint a lawyer for you.**

H. INSIST ON YOUR RIGHT TO HAVE A LAWYER RIGHT AWAY.

III. Guide to Your Rights When a Policeman Tries to Search You

A policeman may search you if you are under arrest. He may search your home or other property if he has a search warrant signed by a judge. He may search only the area described in the warrant. If you are not under arrest and if the police officer does not have a proper search warrant, you do not have to agree to a search of your clothing, personal property or home.

Tell the officer that you object to his making a search without a search warrant. If he insists on making the search over your objections, **do not resist him with force.** Note his name and badge number. If you are able, call someone to witness the search. Also, if you are able, or as soon as you are able, call and report the unlawful search to a police station or any Office of Citizen Complaints. Ask and make note of the name of the person to whom you report the search.

If you consent to a search of any kind, you cannot later claim it was unlawful. Help the law help you. Object to and report unlawful searches.

If you are stopped for a traffic violation the arresting officer may search your automobile and any evidence which is found may be used against you even though it is entirely unrelated to the traffic offense for which you were originally stopped.

IV. Guide to Your Rights When a Policeman Mistreats You

Even though you may have done nothing unlawful, because of circumstances unknown to you a policeman may be justified in arresting you or asking you to identify yourself. Conduct yourself peaceably even if you feel the arrest or request for identification is improper. Problems between citizens and police most often arise when a citizen resists arrest or fails to cooperate with a policeman when he is legally obligated to do so.

The law does not permit police officers to **threaten, insult,** or **physically abuse** citizens. If such an incident should occur to you, or your family or friends, report it at any police station. If you hear complaints or rumors of mistreatment of citizens by the police, encourage the complainer to report the incident. Give the community and the police a chance to discipline or remove an abusive officer and to answer exaggerated or malicious rumors and charges against an innocent officer.

V. Your Rights if Arrested

The police are not doing anything wrong by asking you questions, so long as they fully warn you at the beginning of the questioning of:

A. Your right to remain silent.

B. Your right to have an attorney present for consultation if you agree to answer questions.

C. Your right to have an attorney appointed if you are charged with a felony and cannot afford to pay an attorney.

D. That your statements can be used against you in court.

E. That you may stop answering questions at any time.

The police may not use promises, threats, or force to get you to answer. Remember, you may ask questions at any time during the procedure.

VI. When Can a Person Be Arrested?

A policeman may arrest a person:

A. If he sees a person violating a law. It may be a city ordinance, or a state or federal law. The law may be a serious crime (felony) or a lesser offense (a misdemeanor). The important thing here is that the policeman sees the violation.

B. If he has good reason to believe a crime has been committed and that the person arrested committed it. A policeman may arrest you, believing you to be, say, a robber. While it may be you are innocent, you may have to establish this by legal means. Such an arrest may be for a felony, which may be punishable by imprisonment in the penitentiary, or death. Burglary, robbery and murder are examples of felonies. Such an arrest may also be made for certain misdemeanors, assault and battery or making menacing threats.

C. If he has a warrant for the arrest of a certain person. A warrant is a legal document issued by a judge or a clerk of courts directing a law enforcement officer to make an arrest. If someone swears that you have committed a crime — felony or misdemeanor — and files the proper papers, a warrant may be issued for your arrest. (However, this is a serious matter. The person making a false claim for your arrest can be arrested and charged with violation of the law, as well as become liable for a false arrest suit filed by you.) If a warrant has not been issued, the policeman cannot legally arrest you for certain misdemeanors, such as trespassing, unless the violation was committed in his presence.

A citation given for a traffic violation is not an arrest in the technical sense. The ticket is a summons to appear in court on the charge.

VII. Your Rights in Court

When brought into court it is the duty of the judge to inform you of:

A. The nature of the charge against you.

B. The identity of the person making the complaint and permit you or your attorney to read a copy of the complaint.

C. Your right to a continuance (postponement of the proceedings) in order to secure an attorney if you are not represented by one.

D. Your right to an appointed attorney if you cannot afford to pay an attorney.

E. The effect of the pleas which may be entered.

F. Your right to trial by jury and the need for making a written demand for such a trial.

G. The nature and extent of possible punishment on conviction and your right to a preliminary hearing if the charge against you is a felony.

VIII. You may want to discuss with your class the following outline of the different steps from commission of a crime to imposition of sentence.

A. Crime committed

   1. Undetected (out of system)

   2. Detected

      a. Unreported (out of system)

      b. Reported to police OR
      Observed by police

   3. Investigation

      a. No arrest (out of system)

      b. Arrest

4. Booked

5. Initial Appearance

6. Preliminary Hearing

7. Information OR
   Grand Jury Indictment

8. Arraignment (Plea)

9. Trial

10. Sentence

11. Appeal

IX. Hypothetical situations which may be used as a basis for classroom discussions.

A. Search and Seizure: **Rochin** example.
(You may want to write the Fourth and Fifth Amendments on the blackboard for reference.)

The police suspect Jones of selling narcotics. Not having enough information to procure a search warrant, the police go to Jones' house at night, knock on the door, and, receiving no answer, break down the front door. They then force their way into Jones' bedroom where he and his wife are asleep. As soon as the police burst in, Jones grabs two capsules next to the bed and swallows them. The police arrest Jones, handcuff him and take him to a hospital where, at the direction of the police, a doctor pumps Jones' stomach against his will. This stomach pumping causes Jones to vomit, and the two capsules are recovered. They contain morphine. Jones is charged with illegal possession of narcotics. With the two capsules as the chief evidence against him, Jones is convicted of possessing narcotics in violation of the law. (Does Jones have any Constitutional grounds for appeal?) Should the capsules have been admitted in evidence?

Possible Issues: Should the police be allowed to break into Jones' house without a warrant? To break into his bedroom? To forcibly pump Jones' stomach against his will? Does this kind of police behavior seem offensive? If so, do we begin to understand the reasons for the Fourth Amendment's prohibition against unreasonable searches and seizures, and the exclusionary rule used to back it up? And the reasons behind the Due Process Clause of the Fourteenth Amendment?

We all want to stop crime — why protect guilty people? More important are an individual's rights, isn't there a better way to balance the interests involved than the exclusionary rule? (E.g., all accused take a lie detector test; a defendant **must** take the stand; use truth serum or hypnosis?)

B. Search and Seizure.

Last Monday, Officer Friday was assigned to investigate a recent robbery on the Plaza. Friday received a tip from Fred Fink that Larry Luckless had been involved in the robbery. Friday had never heard of Fink before. Acting solely on the tip, Friday went to Luckless' home. Without knocking, he smashed in the door and found Luckless getting ready for bed. Friday grabbed Luckless, threw him against the wall, and frisked him.

Then he made a careful search of the entire house. Luckless asked Friday what he wanted and demanded to see a warrant. Friday said he didn't need a warrant and Luckless would find out what was going on when they got to the police station. When Luckless said he would not go to the station, Friday roughed him up a little and "convinced" him to go.

Luckless was kept in jail until Thursday morning when the police told him he was a robbery suspect. Then he was taken to an interrogation room where he was questioned for eleven hours. Luckless asked to see a lawyer, but Friday said he could not see one until he told the truth. Luckless asked whether he had to answer the questions and Friday told him that he'd better talk if he knew what was good for him, and anyway innocent people have nothing to hide. Finally, Luckless admitted that he had been at the Plaza the night of the robbery, but he said he did not rob anybody. At the trial, District Attorney Hangem offers Luckless' statements in evidence.

Possible Issues: Was there probable cause for arrest or even for a search warrant? What if Friday found stolen goods or narcotics there — admissible? Why **Miranda** rights? What could a lawyer have done here: Is there a better way to protect citizens than by excluding improperly obtained evidence, e.g., by taking Officer Friday to court, civil and/or criminal?

C. Stop and Frisk; Probable Cause.

Clark is walking in Volker Park, minding his own business. An officer sees Clark, who looks like a hippie with long hair, a beard, and boots, and thinks he may be carrying some pot. The officer has no probable cause to make an arrest: he just has a hunch and thinks Clark looks suspicious, and he's heard that a lot of pot is sold at Volker Park. The officer stops Clark and frisks him; he finds nothing and lets Clark go on his way. Do you see any reason why you might not want to allow the police to stop Clark?

Possible issues: Wasn't the officer simply doing a good job, diligently trying to prevent crime? Suppose the officer **had** found two joints on Clark, should the evidence be admissible in court againt him? Why or why not? How much interference by the police do you want to allow in order to prevent crime? Would you allow some interference short of probable cause? How much?

D. Eyewitness identifications; bail, pretrial publicity. (You may want to write the Sixth, Seventh and Eighth Amendments on the blackboard for reference.)

Jim Davis, age 17, finished his last year at Missouri City High last Saturday with all A's. That night Jim's parents threw a party in his honor and gave him a nice wristwatch as a present. When the party began to break up, Jim offered to walk some of his friends to a bus stop a few blocks from Jim's home. Jim needed the fresh air since he had been attending his guests all evening. When the group was about a block from the bus stop, Jim's friends saw the bus pull up to the stop so they had to run in order to catch it. As they were running, a policeman stepped out of a doorway and shouted for everyone to stop. Only Jim stopped, because his friends hadn't heard the officer. They boarded the bus and it drove away.

The officer approached Jim, told him that he was under arrest and ordered Jim to put his hands up against a building, feet apart. Jim was frisked and his watch was discovered.

(Jim didn't know that Julie's Jewelry Shop, located down the street, had been robbed that very evening by a gang of young hoods who stole a wristwatch identical to Jim's.)

On the way to the police station, the officer stopped at Julie's Jewelry Shop to get an identification. Since it was now about 2:30 a.m., Julie was asleep in the back room when the doorbell rang. She came to the door with her eyes half open and responded to the officer's questions as follows:

Policeman: This is one of the men who robbed you tonight, isn't it?

Julie: Well, ...they all looked alike to me... but now that you mention it... yeh, he's probably one of them.

Policeman: Just probably?

Julie: Yeh, he's the one.

Policeman: Thank you, ma'am.

When Jim arrived at the police station, he was booked and asked to sign a confession. Jim said that he just wanted to go to sleep. Although tired, he signed the confession.

Jim spent three days in jail before he was taken to court for an initial hearing. While in jail, the other inmates cursed and beat him.

At the arraignment hearing, the judge decided that there was sufficient evidence against Jim to try him for the robbery. The trial date was set for August 30, 1971. Bail was set at $5,000, but since neither Jim nor his relatives had that much money, he was sent back to jail to await trial.

The day after Jim's hearing, the local newspaper carried a story about the robbery of the jewelry store. In the article Jim was described as a "vicious kid, whose grandfather had been hanged in 1920 for killing a police officer." The article also said that Julie had given a very detailed description of Jim Davis as one of the robbers and that Jim's trial would be a waste of time since he had already signed a confession.

Possible Issues: How reliable are eyewitness identifications? What is the purpose of bail? The problem of pretrial publicity.

E. Purpose of Incarceration.

Smith, a 21-year-old mechanic, is convicted of five counts of receiving stolen goods and is sentenced to one-to-five years in the state prison. His crime consisted of knowingly purchasing stolen automobile parts on numerous occasions from some friends who had stripped the parts off a couple of hot cars they had stolen. Smith has had a clean record, except for an arrest for drinking under age when he was sixteen. The judge took this fact into consideration, but felt that in view of the terrible stolen car problem in this area, a stiff sentence was needed as a warning to others of what will happen if they are involved in disposing of stolen auto parts. So Smith goes off to prison, where he lives like an animal in a cage, cut off from society, degraded and humiliated, exposed to homosexuality and hardened criminals. What is Smith's incarceration supposed to accomplish?

Possible issues: Punishment? Revenge? Deterrence? Isolation? Rehabilitation? If rehabilitation is a goal, how can we hope to rehabilitate with prison conditions as bad as they are? What are the chances that Smith will come out of prison a reformed man, holding no animosities, and ready to take his place in society as a constructive, law-abiding citizen? Or will he come out a hardened young man, demoralized and dehumanized, bitter at society in general and prone to commit further crimes? Doesn't the criminal law defeat its own ends as soon as an offender sets foot in one of today's prisons?

Additional **OPTIONAL** hypothetical situations.

F. Result of Act is More or Less than Expected.

Smith and Jones get into a fist fight outside a bowling alley. Smith strikes Jones once in the mouth, causing a cut inside Jones' mouth. The blow isn't terribly hard; at worst it might knock out a normal man. However, Jones is a hemophiliac and bleeds to death from the cut Smith caused. How should the law deal with Smith?

Possible issues: Question of what the criminal law should do when the results of a person's act are more than he expected and when they are less than he expected (law of attempts)? Should a man be held responsible for any and all consequences of his illegal acts or only the "natural and probable" consequences? What is the role of intent?

G. Punishing "Risk Creation."

Jones, a reasonably well-educated, upstanding citizen embezzles $1,000,000 from the bank where he works. He is caught and returns almost all the money. He is tried and convicted and receives a 1-10 year prison sentence for embezzlement, imposition of which is suspended and he is put on probation. Smith, an unemployed drop-out, holds up a bank at gun-point and escapes with $800. He is caught and the money recovered. He is tried and convicted and receives a 5-15 year prison sentence for armed robbery of a bank. He is paroled in 8 years. Is it fair to punish Smith more severely than Jones?

Possible Issues: Did Jones endanger anyone when he embezzled the money? Didn't Smith create a much greater risk of harm to other people by using a gun to commit his crime? Is "risk creation" an important consideration in determining the severity of sanctions for different crimes? Might not this explain the apparent leniency with which the criminal law deals with "white collar" crimes?

H. **Crimes Without Victims.**

Smith and Jones are homesexuals. Both are adults. In the privacy of Smith's home the two have homosexual relations with each other in violation of the law. Has anyone been hurt? Is there a "victim" of this "crime"?

Smith is a narcotics addict. By using heroin, Smith violates the law and subjects himself to severe penalties. Does Smith hurt anyone when he shoots "H"? Is there a "victim" of this crime? (Question of selling drugs to others or the cost of drugs to support a habit leading to criminal conduct — see X, C, infra.)

Aren't these crimes without victims?

Possible Issues: Should the law endeavor to protect people from themselves? Shouldn't people be free to do what they want as long as there is no risk of harm to others, but only to themselves? What about a law requiring motorcyclists to wear helmets? Is there some justification for paternalism in the law?

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I. Fines and Incarceration.

Smith, a common drunk, is found lying on the sidewalk. He is arrested and convicted for the 26th time of being drunk in a public place. His sentence is "$10 or 10 days." Unable to pay the $10, Smith goes to jail for 10 days. Jones, a prosperous businessman, gets drunk in a bar and goes on a brief, but noisy, spree. He is arrested, tried and convicted of being drunk in a public place, drunk and disorderly, and disturbing the peace. His sentence is $200 or 60 days. Jones pays the $200 and goes home. Does this seem just?

Possible Issues: Are fines ever just punishment? Don't they discriminate in favor of those with money? Wouldn't it make more sense to fine Smith and incarcerate Jones, since money is less important to Jones than his freedom and time, while a $10 fine to Smith is a lot tougher punishment than ten days in the cooler? Should the law ever allow an offender to escape incarceration by paying a fine? Or is the fact that some people have more or less money than others a social fact that the law can't stop to consider when determining sanctions for crimes?

X. Drug Law

A. Missouri law — Uniform Controlled Substance Act — Chapter 195

1. The Act lists drugs in five schedules of "controlled substances." The drugs (controlled substances) are classified according to:

   (a) Potential for abuse.

   (b) Whether the substance has currently accepted medical use for treatment purposes.

   (c) Whether abuse of the substance may lead to limited, moderate or high physical or psychological dependence.

2. (From V.A.M.S. 195.020)

   It is unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense, distribute or compound any controlled substance ... or to possess any apparatus, device or instrument for the unauthorized use of any controlled substance.

3. (From V.A.M.S. 195.200) — Penalty — Possession — Heroin, Morphine, LSD, Marijuana, Mescaline, Peyote, Methodone (Schedules I and II).

   First Offense: not more than 20 years in State prison or six months to one year in county jail, except:

   (a) marijuana — first offense of possession (35 grams or less) or delivering without remuneration (25 grams or less): not more than one year in county jail or up to $1,000 fine, or both (i.e., a misdemeanor). If more than 35 grams, not more than five years in state prison (a felony).

   (b) hashish — possession or delivering without remuneration, 5 grams or less, same as (a). If more than 5 grams, not more than 5 years in state prison.

   Second Offense: not less than 5 years nor more than life imprisonment, except:

Marijuana or **hashish** — not more than one year in county jail or five years in state prison.

Third Offense: not less than 5 years nor more than life imprisonment. No probation can be granted.

4. Penalty — **Sale** — Heroin, Morphine, LSD, Marijuana, Mescaline, Peyote, Methadone (Schedules I and II)

   First Offense: not less than five years in state prison nor more than life.

   Second Offense: not less than five years in prison nor more than life. Court cannot grant probation.

5. (From V.A.M.S. 195.270) — Penalty — Possession or Sale of — Stimulants or Depressants (amphetamine, phenobarbital) (Schedules III, IV and V)

   Confinement in county jail up to one year and/or up to a $1,000 fine, or imprisonment up to ten years.

6. (From V.A.M.S. 195.290)

Court has the power to issue an order expunging conviction in cases where a person convicted was 21 years old or younger at time of conviction and has been on probation for not less than six months.

B. Federal law

1. October 27, 1970, President Nixon signed "Comprehensive Drug Abuse Prevention and Control Act of 1970." Effective date was May 1, 1971.

2. Penalty:

   (a) All mandatory minimum sentences are eliminated except when an individual engages in a "continuing criminal enterprise." (i.e., a drug ring).

   (b) Penalty for participation in a "continuing criminal enterprise" (in concert with five or more persons) is a **mandatory** minimum sentence of not less than 10 years, a fine of up to $100,000, and forfeiture of all profits derived from the enterprise.

   (c) A "dangerous special drug offender" is one who has two or more controlled drug felony convictions or who derives a substantial income from continuous illegal dealings in controlled drugs or who plays a principal part in a controlled drug conspiracy. Such a person can be sentenced to up to 25 years.

   (d) Penalty for possession of controlled drugs (e.g., heroin, marijuana, LSD) is a misdemeanor. A first offender may be placed on probation for up to one year, and upon successful completion of said probation have the charge dismissed.

   (e) Penalty for manufacture, distribution or sale of Schedule I or II narcotics (heroin, LSD) is up to 15 years imprisonment; for non-narcotic drugs (marijuana) up to 5 years imprisonment. Second offenses are punishable by double the first penalty. If a person over 18 distributes to a person under 21 the punishment is twice that otherwise prescribed.

3. Narcotic Addict Rehabilitation Act (42 U.S.C. Sec. 3401, et seq.)

(NOTE: Lawyers should explain to their classes that the NARA program is available to any narcotic addict who sincerely wants to break his habit.)

> It is the policy of the Congress that certain persons charged with or convicted of violating Federal criminal laws, who are determined to be addicted to narcotic drugs, and likely to be rehabilitated through treatment, should, in lieu of prosecution or sentencing, be civilly committed for confinement and treatment designed to effect their restoration to health, and return to society as useful members.
>
> It is the further policy of the Congress that certain persons addicted to narcotic drugs who are not charged with the commission of any offense should be afforded the opportunity, through civil commitment, for treatment, in order that they may be rehabilitated and returned to society as useful members and in order that society may be protected more effectively from crime and delinquency which result from narcotic addiction. 42 USC Sec. 3401.

A NARA proceeding is begun when a narcotic addict who desires to obtain treatment for his addiction files a petition at any United States attorney's office. That petition requests that the narcotic addict be admitted to a hospital for treatment of his addiction, and includes the addict's name, address and the facts relating to his addiction. A relative or roommate of a person believed to be a narcotic addict may file a petition on the person's behalf.

If the United States attorney determines that there is reasonable cause to believe that the petitioner is a narcotic addict, he will file a petition with the United States district court. When the petitioner first appears before the district court, he is advised by the Judge that if, after an examination and hearing, he is found (1) to be a narcotic addict who (2) is likely to be rehabilitated through treatment, he will be civilly committed to the Surgeon General of the United States for treatment which may last as long as 42 months.

He is further advised that during a 6 month period of treatment he will be confined in an institution and that for a period of three years following his release from confinement he will be under the care and custody of the Surgeon General for treatment and supervision under a posthospitalization program.

The Judge then appoints two qualified physicians who examine the petitioner and file a report with the Court expressing their professional opinions as to whether (1) the petitioner is a narcotic addict and (2) he is likely to be rehabilitated. This examination can take as long as thirty (30) days.

After the Judge has received and studied the report of the two physicians, the petitioner makes his second appearance before the Court. If both physicians have concluded that the petitioner is not a narcotic addict or is not likely to be rehabilitated, the Court immediately enters an order discharging the petitioner and dismissing the case.

However, if the Court determines after a hearing that the petitioner is a narcotic addict who is likely to be rehabilitated, the Court orders him committed to the care and custody of the Surgeon General. This initial commitment is for a period of six months' in-patient treatment.

Upon completion of this initial period of confinement, (which may be shortened to less than six months if the Surgeon General determines that the patient has been cured of his drug addiction and rehabilitated, or that his continued confinement is no longer necessary or desirable), the petitioner makes a third appearance before the Court. The Judge, after considering the Surgeon General's recommendations with respect to posthospitalization treatment, may place the petitioner under the care and custody of the Surgeon General for a three-year period of out-patient treatment.

Any determination under the NARA program that a petitioner is a narcotic addict is not deemed a criminal conviction nor may any results of any of the NARA proceedings be used against a petitioner in any criminal proceeding.

Any petitioner who escapes or attempts to escape while committed to institutional custody for examination or treatment under the NARA program is subject to criminal prosecution.

Often times a person convicted in a state court of a drug related crime will be put on probation with one of the special conditions of probation being that he enter and successfully complete the NARA program.

C. Policy Considerations.

1. is drug use (as opposed to drug sale for purposes of this discussion) so much within the private sphere of personal conduct that it should not be regulated or prohibited by law? Does a person have a right to harm himself, as long as he does not harm others or infringe on their rights? How sure do we have to be that drugs (such as marijuana) do not cause the user to commit anti-social acts before we remove that drug from the text of our criminal law? How can we be certain that such relatively non-antisocial drugs do not lead to use of stronger, more anti-social drugs? What about the issue of whether or not drug use leads to crimes against property and/or persons?

2. How does the whole drug problem fit into the broader civil liberties problem centering around so-called "consensual crimes," or "crimes without victims"? Murder and robbery have victims. But who is the victim of alcoholism? Who is the victim when a person is on an "LSD trip" in a room by himself? Who is the victim of a 3-pack per day cigarette habit? (Why is this not illegal?)

3. Should people be put in prison at all for drug offenses? What is the effect of imprisoning youngsters between the ages of 18 and 25? Will they not come in contact with hardened criminals and confirmed drug addicts in prison? Will they not suffer psychological harm in prison? Will they not develop a stronger hostility against the "Establishment" and perhaps not outgrow their youthful rebellion? Is youthful rebellion a good thing?

   What about civil commitment for drug dependent persons? Is the cost worth it? Are drugs a medical or legal problem? Can such a distinction be made? If it is a medical problem, should this affect the way the law treats it?

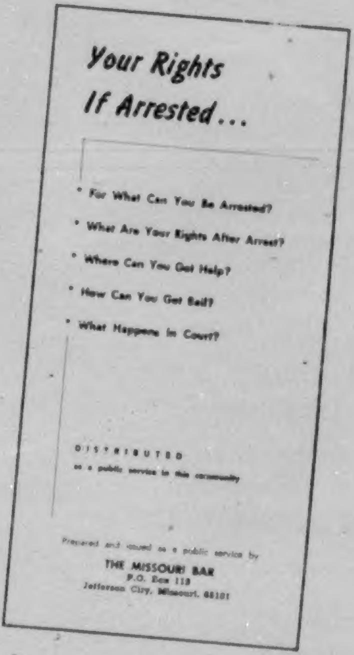
D. Should marijuana be legalized? If so, what limitations would be put in law? Age? Quantity? Quality?

E. Drugs v. alcohol or cigarettes.

F. Again, we are balancing the interests of the state with those of the individual.

MATERIALS FOR STUDYING CRIMINAL LAW

Below are two pamphlets which deal with criminal law and an individual's rights and responsibilities.



Your Rights
If Arrested . . .

- For What Can You Be Arrested?
- What Are Your Rights After Arrest?
- Where Can You Get Help?
- How Can You Get Bail?
- What Happens in Court?

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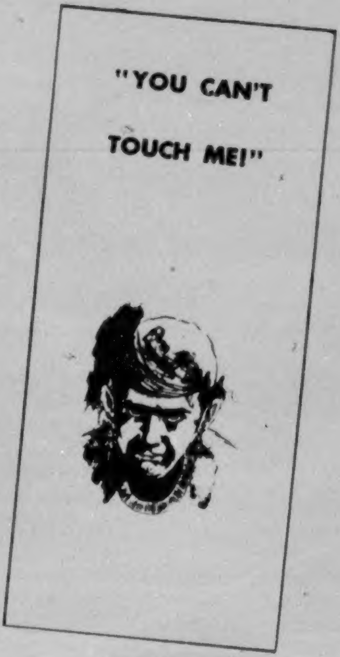


"YOU CAN'T
TOUCH ME!"

The two pamphlets are available at no cost in reasonable quantities for classroom distribution. Requests should be sent to:

The Missouri Bar
P. O. Box 119
Jefferson City, Missouri 65101

Many of the films listed in the Missouri Bar's Multi-Media Law-Focused Education Library Catalogue would also be appropriate for study of the criminal law. These materials are available from the Missouri Bar at no cost. If you don't have a copy of the catalogue, you may request one by writing to the above address.

AUTOMOBILE LAW

I. What to do in case of an accident:

(The handout entitled "What To Do In Case of an Accident" may be utilized in conjunction with the study of automobile law.)

A. **STOP** — Missouri law requires the driver of a car involved in an accident where there is personal injury or property damage to immediately stop the car at the scene of the accident or as close as possible without obstructing traffic.

B. **ASSIST THE INJURED** — make arrangement for anyone seriously injured; do **not** move an injured person unless you know what you are doing.

C. **PROTECT THE SCENE** — Take precautions to prevent further accidents; station someone to warn away approaching vehicles.

D. **CALL AN OFFICER** — even where there are apparently no personal injuries or serious damages to property, it is advisable to give notice immediately to an officer so he can investigate the accident. His official report may greatly assist you later if any claim for liability is made.

E. **COMMENTS** — Do not comment on the accident. Keep your notes and information strictly to yourself. Admit nothing and sign nothing even if you think you are in the wrong. You may learn later that you were not in the wrong or that the other driver was equally to be blamed or more so. Your emotions at the time of the accident may deceive you. If at a later date facts clearly show that you alone were wrong, then is the time to admit blame.

Missouri law requires only that you give your name, address and the registration number of the vehicle you are driving and that you exhibit your chauffeur's or operator's license.

F. **ASSIST THE OFFICER** — Remain at the scene, unless injured, until the officer arrives. Cooperate with the officer by advising him of the basic facts briefly. Remember: no one can force you to give an opinion as to the cause of the accident either at the scene, at police headquarters, or elsewhere. You have the right to consult a lawyer before making any statement. If it is a serious accident, consult him as quickly as possible.

G. **IDENTIFY THE OTHER DRIVER** — Obtain the other driver's name, address and the registration number of the vehicle he is driving, and request him to exhibit to you his driver's license.

H. **WITNESSES** — Obtain the names and addresses of any and all witnesses as soon as you can — both eye-witnesses and all others who might have some information about any of the circumstances of the accident. After writing down their names and addresses, attempt to obtain from these witnesses a statement as to what happened and have them, if they will, write it down at the scene. Always have a pencil and pad in the glove compartment of your car.

I. **TAKE NOTES — DIAGRAM THE AREA** — Make your own written notes on all significant circumstances concerning the accident. Show position of cars after the accident. Step off exact distances of skid marks and other distances. Be certain that you can at a later date point on the road where the vehicles collided and where they came to a stop. If you or someone else has a camera at the scene, take pictures to preserve skid marks, position of cars, and other physical evidence that will disappear after the accident.

J. **ARRESTS** — An arrest at the scene of the other party or yourself does not necessarily indicate liability. An arrest and conviction in connection with an automobile accident cannot ordinarily be used against you later in a suit for damages. Any statement made may be used as an admission, so it is important that you contact your lawyer as soon as possible before making any statements.

K. **WHEN TO LEAVE THE SCENE** — Unless your injuries impel you to do otherwise, do not leave the scene of the accident until you have, as outlined previously, assisted the injured, protected the scene, called an officer and assisted him, identified the other driver, obtained the names, addresses, and statements of all witnesses and made notes.

L. **REPORTS** — Missouri law requires that the driver of a vehicle involved in an accident (inside or outside of a city) resulting in personal injury or death to anyone or resulting in damage to property of anyone, including himself, in excess of One Hundred Dollars must, within ten days after the accident, file a written report with the Director of Revenue of the State of Missouri Motor Vehicle Safety Responsibility Division, Jefferson City, Missouri, on forms prescribed by the Director. Nothing contained in the report or any action taken by the director pursuant to the report can be used as evidence in any trial for damages arising from the accident.

The form for reporting the accident may be obtained from the AAA, your insurance company, local law enforcement departments or by writing the Director of Revenue, Motor Vehicle Safety Responsibility Division, Jefferson City, Missouri.

M. **INFORM INSURANCE COMPANY** — Make a complete report to your public liability insurance company immediately, or have your lawyer make the report for you. Failure to make a prompt and correct report may affect your rights. If your car was damaged more than the deductible amount, similarly notify your collision insurance company. If you were injured, notify the company issuing the applicable insurance (accident insurance, hospitalization, etc.).

N. **PAY NOTHING UNLESS YOU SEE A LAWYER** — Make no immediate payment of any kind to the other party and do not promise to make a payment. Any such payment would be at your own risk. The other driver cannot force you to make any payment without legal proceedings, nor can he hold your car without legal action.

Be cautious in dealing with persons offering to adjust your case or anyone seeking to hurry you into a settlement. Select your own lawyer to advise you. A lawyer is trained to assist you in handling the problems which are created as a result of an accident.

O. **SUMMARY OF POINTS TO REMEMBER:**

1. You must give your name, address, the registration number of the car you were driving, and, if you are not the owner of the car, the name and address of the owner, to any person injured, the owner of the other car, and any police officer at the scene.
2. No one may force you to give **opinions** of the cause of the accident, either on the scene or at the police station. You have a right to see your attorney before making any statement. You are not required to give any information other than that set out in 1, above. **Do Not** give any opinion as to the cause of the accident. If you are arrested and required to appear on a traffic charge, you should obtain the advice of an attorney before admitting guilt or liability.
3. If possible, do not move your car until the police arrive. However, you should not leave your car in a dangerous position in the road.

4. Get the names and addresses of the driver and passengers of the other cars involved and also of all witnesses to the accident.

5. Make notes of all circumstances concerning the accident. Sketch the positions of the cars before, after and at the time of the accident. Step off skid marks. Make notes of all physical damage to your own and other cars.

6. Do not make or accept any payments of money for damage or injury without legal advice. Do not sign any statements without consulting a lawyer.

II. Your Rights in Traffic Court:

A. You have the right to have the charges against you explained.

B. You have the right to have a lawyer.

C. Pleas:

1. Guilty — This means you admit the charges brought against you and the sentencing is fairly automatic with a set penalty for most violations; you can attempt to modify the penalty by bringing to the judge's attention extenuating circumstances.

2. Not Guilty — This means you believe you have **not** violated the law in the manner and form as charged. You might feel you have some justification for the driving action which attracted the officer's attention who issued the complaint. **If the police officer doesn't show up at the trial, the charges are dismissed since there will be no one to testify against you.**

III. Automobile Insurance

A. The various types of insurance:

1. Collision and Fire and Theft.

a. Covers only your car against damage or loss.

1. Liability and Property Damage:

a. Protects you against claims by other persons involved in an accident.

B. Insurance involved when you buy a car on a time payment plan.

1. You should know exactly what kind of insurance you are getting, if any, when you buy on time. Generally, when you buy a car on time, the seller will require you to buy $50 deductible collision and fire and theft insurance on the car. This insurance only protects against damage to or loss of your car. The seller requires this insurance in order to protect the car against damage or loss until you have completed your payments. Many people do not realize that this kind of insurance does not protect them against damage they may do to anyone else in an accident. You can get the other kind of insurance, called liability and property damage insurance, but at additional cost.

2. You should have liability and property damage insurance if you own a car. This will protect you against claims by other persons involved in an accident. Missouri has a

Motor Vehicle Safety Responsibility law. In general, this law provides that your driver's license and your car registration may both be suspended if you are in an accident causing damage in excess of $100 to another's property, or bodily injury to another person, unless you can either post a bond to take care of the damage or furnish proof that you have liability and property damage insurance.

3. The Seller may also require you to buy other kinds of insurance, such as credit life insurance or health and accident insurance. You should ask the seller what kinds of insurance you are buying, what protection the insurance gives and how much it costs. By law, you are entitled to know this information, and it is required to be contained in your time sales contract. Be sure you read it.

IV. Discussion Problems:

The format for discussion under each heading will be to pose a problem which exists today, then suggest a solution which is designed to arouse the interest of the students and force them to examine the bases for their conceptions.

A. Laws Concerning Driving.

1. **Problem:** Over fifty thousand people are killed each year due to traffic accidents. A major factor in these accidents is excessive speed.

2. **Solution:** Reduce speed limits on all streets and highways to twenty miles per hour. This will reduce the number of accidents, and, if there are any accidents, there will be practically no fatalities.

3. **Considerations:**

   a. Speed laws: Are they reasonable? Are they set too high? Too low? Is speed, in fact, the main factor?

   b. Traffic regulations — "moving violations;" stop signals, yield right-of-way, reckless driving, etc.

   c. Other traffic regulations — signs, street markings, etc. Does the city provide adequate markings?

   d. Enforcement: On whom does successful law enforcement really depend? The police? The public? How are the laws best enforced? Should traffic regulations be more strictly enforced?

4. Competing interests: Pedestrians, drivers, passengers, car manufacturers, police, insurance companies, personal injury lawyers.

B. Laws Concerning Motorists.

1. **Problem:** Cars have killed more Americans since 1900 than the death toll of all U.S. wars since 1775; accidents injure some 4,000,000 annually. An important cause of these casualties is that the drivers of the automobiles are not qualified physically or mentally to drive a car.

2. **Solution:** Impose stricter licensing requirements: (a) Minimum age of 25; (b) rigid physical exam; (c) intelligence exam; (d) examinations to be repeated every two

years; (e) revocation of license if more than one moving violation within three-year period; (f) immediate revocation of license if found driving after having done **any** drinking.

3. **Considerations:**

   a. What are the present requirements for obtaining a license?

   b. Would the following proposed physical requirements be reasonable: eyesight, including depth perception and field of vision; hearing; reaction time; condition of heart and blood vessels; general physical condition.

4. Competing interests: Physically fit, physically handicapped, insurance companies, personal injury lawyers, etc.

C. Laws Concerning Automobiles

1. **Problem:** Many accidents are caused by mechanical failure of the car and/or bad design, which tend to increase or worsen accidents.

2. **Solution:** Make cars uglier but safer. For example, have one foot thick rubber bumpers which completely surround the car. Also make it a law that all people in cars must wear seat belts and harnesses.

3. **Considerations:**

   a. Motor vehicle registration and inspection. Are standards rigid enough? Are tests often enough?

   b. Are safety standards necessary? Who sets them? Are they adequate?

   c. What needs suffer if we decide to spend money on auto safety?

D. Principles and Values.

Following are some values which the American people actually do have or profess to have which should be utilized in connection with A, B, and C above. Some of them are inconsistent with other values. How do we reconcile the differences?

1. Human life is held to be of highest value.

2. Excitement is desirable. Going fast is exciting.

3. It is good for people to be able to travel quickly from place to place.

4. Cars are necessary for all people: getting to and from work; going shopping; taking the children to school; visiting friends, etc.

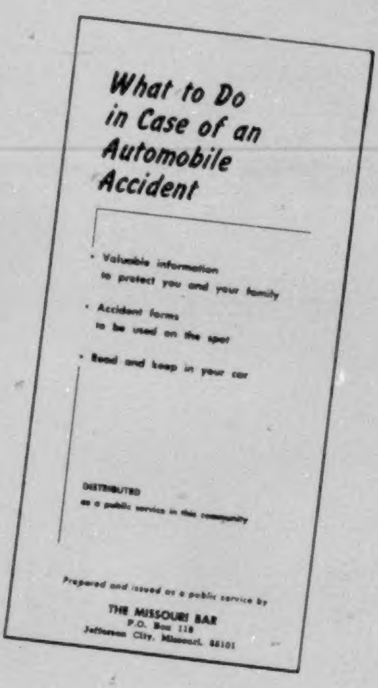
5. Cars pollute our atmosphere.

6. It is unjust to use physical examinations to eliminate drivers, since physical condition is a result of chance.

7. Rapid transportation is essential for a prosperous economy.
8. People should be penalized for their own mistakes; innocent people should not be penalized at all.

MATERIALS FOR STUDYING TRAFFIC LAW

Below are two pamphlets which deal with traffic law and on individuals' rights and responsibilities.



What to Do in Case of an Automobile Accident

- Valuable information to protect you and your family
- Accident forms to be used on the spot
- Read and keep in your car

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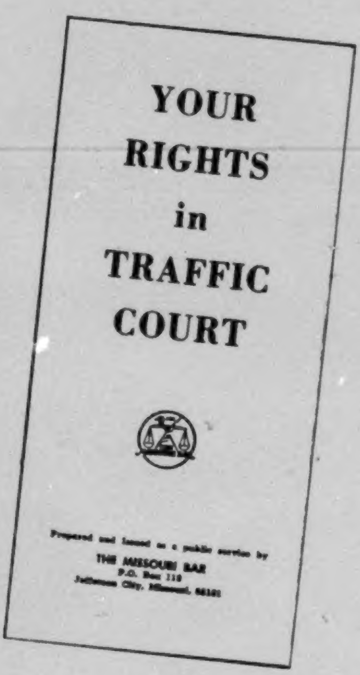

YOUR RIGHTS in TRAFFIC COURT

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THE MISSOURI BAR
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The two pamphlets are available at no cost in reasonable quantities for classroom distribution. Requests should be sent to:

The Missouri Bar
P. O. Box 119
Jefferson City, Missouri 65101

CONSUMER LAW

I. Introduction

The basic problem in the field of consumer transactions is that the buyer is often "at the mercy" of the seller. Accordingly, special provisions have been and are being made in consumer protection laws to recognize the special and peculiar nature of retail consumer transactions. Rights are being provided for the consumer and maintained against both the seller and the often faceless finance company. In the future, new direct regulations, statutes, and case law can be expected to expand the field of consumer law.

The format for the materials in this section is as follows: Part II presents ten separate consumer illustrations, each followed by the legal principles applicable to the general situation. The ten topics are:

A. Purchase, Then Change of Mind

B. Long, Burdensome Contracts

C. Defective Goods

D. Bargain Sales

E. Installment Payments — Default

F. Holder in Due Course

G. Interest — Truth-in-Lending

H. Bait Advertising

I. Home Solicitation Sales

J. Unordered Merchandise

K. Credit

L. Debt - Replevin - Bankruptcy

These illustrations should provide a good vehicle for initiating classroom discussions and presenting the relevant legal points. Each illustration can be presented by itself and no specific order for presentation is meant to be suggested by the lettering from A - J. You will notice that there is some overlap among the illustrations. Usually there will not be time to present all of the illustrations and only the major legal points can be highlighted.

Part III entitled "Points to Remember" serves to integrate into the outline the handout for Consumer Law. The statements in that handout should be gone over in detail with your class.

Part IV entitled "General Policy Issues" contains no statements of substantive law but rather consumer-related public policy dilemmas. The subject matter of each paragraph can be utilized for classroom discussion. For variety, your class could play the role of the federal or a state legislature drafting or confronted with a bill to solve one of these dilemmas.

II. Illustrations for Classroom Discussion:

A. AGREEMENT TO BUY, FOLLOWED BY QUICK CHANGE OF MIND

Mr. and Mrs. North are sitting home one evening when an encyclopedia salesman comes to call. He convinces the Norths to buy a set of encyclopedias for $400, payable only $10 per month ("... a pack of cigarettes a day..."). The Norths give him $10 down and both of them sign some papers he gives them to sign. He leaves with the papers and says the encyclopedia will be shipped in about two weeks. A week later the Norths talk things over again and decide that they really can't afford an encyclopedia even if it would be good for the children. Mr. North immediately calls the encyclopedia company and tells them he's changed his mind. They tell him it's too late and he has to go through with the deal. Is it? And does he?

1. General Rule — Once a buyer and seller have entered into a contract with each other, they are both bound to go through with the deal or pay damages for not doing so **even if no goods are yet delivered and even if no money has changed hands.**

    (a) Just signing a paper can get you into trouble.

    (b) In most consumer cases, not even a writing is necessary, though suits on oral contracts are rare because of proof problems.

2. Reasons why buyer who signs contract might **not** be bound.

    (a) For written contracts, a man is held to have read a paper he signs and is bound to its terms **except:**

        (i) Small print, no chance to read, blanks in contract, etc.

        (ii) Buyer not able to read and seller knows it.

        (iii) Contract or terms are "unconscionable." (See B. 1. below)

    (b) Emphasize: You are generally bound to what you sign.

    (c) Under age, your contracts don't bind you. (No capacity to contract)

        (i) 21 years old is majority in Missouri.

        (ii) Even if married, you still must be 21.

        (iii) Does not apply to "necessaries," however.

            (a) Hard to define: food **is** necessary, encyclopedias are not.

            (b) Person married or living away from home has more things "necessary," e.g., rent, than minor living with his parents.

(d) Duress — threat of serious harm, very rare in consumer sales.

(e) Fraud and misrepresentation

(i) Fraud is saying something which you **know** is not true; misrepresentation may be negligent or even innocent.

(ii) Lying about **what** the paper being signed is; e.g., "This isn't a contract, it's just an application form," **will** make so-called contract void.

(iii) Lying about and thus misrepresenting goods may void contract.

(a) Mere "puffing," e.g., a statement of opinion or a prediction such as: "This is a real good television set," most likely will not be considered fraud or misrepresentation.

(b) Talk about the good being sold is most likely equal to a "warranty."

3. If buyer is bound to the contract, what is the measure of the seller's damages?

(a) **In general,** the measure of the seller's damages is the profit he expected to make.

(b) **In practice,** what usually happens (unless the goods involved are very expensive) is that the seller will keep the down payment because it is too expensive for him to sue for his expected profit.

(i) This may be different when the buyer has signed a negotiable promissory note.

(ii) EMPHASIZE: Seller will most likely try to hold on to the down payment even if buyer **does** have one of the above defenses, and then the **buyer** will have to go through the time and expense of suing which he most likely will not bother with.

CONCLUSION: YOU ARE LIKELY TO LOSE A DOWN PAYMENT. (BUT SEE J BELOW)

B. Long, burdensome written contracts.

Mr. Johnson signed an installment contract four pages long. It contained 143 paragraphs and words like "assignee", "holder", "subrogate" and "estopped." He was later told that the contract said he would have to pay the full price immediately if he were more than a day late with any payment. If a man signs his name to something, should he be held by what it says? Is it fair to hold him? Is it "unconscionable?" What is an acceleration clause? How does it work?

1. Unconscionability — a contract or its terms may be declared void due to unconsionability if the contract seems fair on its face but one party has been tricked or deceived in the bargaining process or one or more of the terms of the contract are intrinsically unfair. (i.e. The price is outrageously high or the terms are almost completely one-sided in favor of the seller.)

The unconsionable contract provisions of the Uniform Commercial Code have been used to void exorbitant prices, clauses limiting liability, and some provisions buried in boiler plate contracts, especially where the buyer has a language difficulty. There is no way to summarize or predict the trends in this area more than to say these provisions were intended to be weapons against deceptive sales tactics and as a way to remedy one-sided clauses in take-it-or-leave-it form contracts that are prepared solely by the buyer, and it is being invoked in many cases and new law is being made continually.

2. Acceleration and Prepayment Clauses —

The papers (contract, note security agreement) which you sign when you make a purchase on time will usually provide that the entire balance comes due if you fail to make a payment when due. Such a provision is called an acceleration clause and means that the seller, if he wants to, can demand the full balance if you get behind on your payments. Generally, such papers do not contain any provisions which enable you to save anything by paying before the due date. You should find out whether you can make any savings by paying before it is due.

C. PURCHASE OF DEFECTIVE GOODS

Mr. and Mrs. East buy a new color television set for $400, "charging it" at the store. They take it home and plug it in and it doesn't work. Robert East, the East's 17 year old son, reaches behind the set to fiddle with one of the adjustment dials and gets an electric shock that burns his hand badly. Can the store get the $400 from the Easts? Can the Easts get anything from the store for Robert's burned hand?

1. The Easts have all the defenses that the North's had, as described in A. above. They also may have additional rights and defenses.

2. Negligence

   (a) If the Easts can prove that the television set was negligently constructed, they can sue the manufacturer.

3. Warranties — Express or Implied.

   (a) An express warranty is a descriptive statement about the goods being sold made by the seller and which becomes a part of the basis for the bargain or sale.

      (i) May be almost defining. e.g. a new television set.

      (ii) May be less central. e.g. "This set has that new phosporous coating on the picture tube.

      (iii) Again, however, "puffing" is not a warranty. e.g. "This is a very good television set."

      (iv) If an express warranty is made, it binds the seller and cannot be disclaimed.

      (v) If the contract is written, the warranty **may** also have to be written to be binding, and it is a good idea to get it in writing (but under the Uniform Commercial Code, most likely there will be no problem in getting in evidence of warranty or promise even if made orally at or prior to the writing. That is, the parole evidence rule is most likely dead in these situations.

Nonetheless, if the oral statement is a warranty, it is good practice always to get the seller to put it in writing or include it in the written contract.

(b) As for **implied warranties,** if there is nothing in the contract to the contrary (or if there is no written contract and nothing about the subject is said), the seller will be treated as if he made the following statements about the goods:

(i) That the seller owns the goods and that he can give the buyer absolute title.

Note: A buyer of consumer goods in the ordinary course of business **does** take free from claims of the seller's creditors.

(ii) That the goods are "merchantable." This means, among other things, that the goods are fit for the ordinary purposes for which the goods are used.

(a) This means, at the very least, that a television set should work.

(b) It certainly means that it should not give you an electric shock when you touch it.

(c) Exclusion and Modification of Warranties

Implied warranties can, however, be modified or disclaimed.

(i) If direction in statutes are followed, the standard manufacturer's warranty (90 days, only parts supplied) will be binding on the buyer.

(ii) Limitations on disclaimer of implied warranties

(a) Must be done in very specific terms which manufacturers do not like to use and often do not use.

(b) Disclaimer of implied warranties does not affect express warranties. e.g. if you sell a "new television" set on an "as is" basis, it still has to be new.

(iii) It is unlikely that a seller can successfully avoid liability for personal injuries arising out of consumer goods sales.

(a) Against public policy.

(b) Unconscionability.

(c) This liability for personal injuries extends to the buyer's family and guests.

(d) **If there is a breach of a warranty** (not disclaimed)

(i) The East can refuse to pay for the television set and make the store take it back.

(ii) The Easts can sue for all damages caused by the breach of warranty, including son's personal injuries.

D. SECOND-HAND AND BARGAIN SALES

Mr. Murphy runs a used appliance store. He does the best he can to see that his goods are workable when he sells them. Mr. Murphy sells about half his appliances on time. No one sells cheaper than Mr. Murphy. Should he be responsible when a refrigerator he sells does not work? If it is twenty years old? His customers are not highly educated. What can he put in his installment contract to tell them that he takes no responsibility for failures of his appliances? How about "EVERYTHING SOLD AS IS" in big letters at the top of the contract? How about "THE ENTIRE AGREEMENT BETWEEN THE PARTIES IS CONTAINED IN THIS WRITING?"

1. The implied warranty of merchantability may be excluded only be conspicuous writing which mentions merchantability, and the implied warranty of fitness may be excluded only by a conspicuous writing. Notwithstanding the above, however, words like "as is" or "with all faults" will exclude all warranties. Further inspection by the buyer or refusal to inspect the merchandise when an opportunity is offered before the contract is entered into will exclude warranties as to defects which could have been discovered by such inspection. Courts have appeared somewhat reluctant to find exclusions of warranties in consumer cases and have found clauses such as "This writing contains the entire agreement between the parties" insufficient to exclude warranties express or implied. (See also discussion under C above)

E. FAILURE TO KEEP UP INSTALLMENT PAYMENTS

Mr. and Mrs. South buy a stereo hi-fi set priced at $400, payable $10 down and the rest in equal monthly payments over a two year period. When purchasing the console both of the Souths signed papers handed to them. They make the first year's 12 payments and then Mr. South loses his job and they cannot make the thirteenth payment. The set has worked perfectly and during the year they had it the Souths were happy with it. Now, the seller says he is going to take the set back and, in addition, sue the Souths for the remainder of the purchase price. What are the rights of the Souths and the seller of the set?

1. Do they have all the defenses which the Norths and the Easts had as to payment for the hi-fi set even though they are buying it in installments? **Yes, except** if one of the papers they signed was a promissory note held by a holder in due course. (But also see discussion under E.5.b. (iv) below)

2. General Rule Upon Default in Payments on Installment Purchase (even without any promissory note involved).

   (a) If one defaults in payment, seller is entitled to take the goods back, sell them to someone else second hand, and **still** sue the buyer for the amount of the price he has not been paid.

   (b) For instance, in terms of the facts involving the Souths, if the total price (ignoring finance charges, etc.) was $400, and the Souths had paid a total of $210 before they stopped paying, and the seller had resold the hi-fi set after taking it back for $90, the Souths would still owe the seller $100 for which he could sue them. THUS, THE SOUTHS WOULD END UP OUT $310 AND STILL NOT HAVE ANY HI-FI SET.

(i) Some mitigations:

(a) Resale must be in reasonable manner (that is, not for phony low price).

(b) If total amount received on resale more than covers the remainder due, the Souths must be given the extra amount collected.

(c) If buyer has paid more than 60% of the cost of the goods, he can **force** the seller to resell. (He **can** waive this right in writing BUT only **after** default, i.e., he cannot waive right in the original sales contract).

3. Borrowing Reminder (Summary of E, 2, immediately above)

(a) If you sign a mortgage or conditional sales contract or security agreement, and if you fall behind in your payments, the seller or lender will have the right to demand the entire balance then due **and** to take the property listed on the mortgage or agreement. After he has taken the property he may sell it for less than the amount you owe and you will still owe money. Some people think they have a choice — pay for the goods purchased or let them be repossessed. That is not true. Even if the goods are repossessed and sold, you may still owe a large part of the purchase price. If your goods are repossessed, find out when and where they will be sold and the price. You may be able to arrange to buy them or have someone buy them for more money than the seller or finance company will get and that will leave you with a lower balance still owing. On the other hand, the seller or lender may, after notice to you, elect to retain the goods in satisfaction of your obligation.

(b) If you sign a note which is a promise to pay a sum of money, **and the note is sold to someone else,** you will owe the new owner that money even if the goods which the note paid for are not good.

4. Security Agreement Reminder

(a) Generally, when you buy an automobile, household appliance, or furniture on time you are required to sign a contract which is known as a SECURITY AGREEMENT. (This contract formerly was called either a chattel mortgage or a conditional sale.) Under such a contract the seller has the right to take back the thing you have purchased if you fail to make your payments. You may also sign a note which commonly is attached to the security agreement.

(b) You should never sign one of these contracts or notes without carefully reading all of its terms. The law requires a retail seller selling on time to include certain important information in the terms of these contracts. This is the way you can find out what your obligations are.

5. (Optional — highly technical) Effect of Signing a Negotiable Promissory Note

(a) **Definition:** A "promissory note" is a written promise by the maker (the person who signs it) that he will pay a certain amount of money with certain interest at a certain time or times to the payee (the seller in this case) **or to whomever the seller sells the note.**

(b) **General rule:** The "holder in due course" of a negotiable promissory note takes that note free of almost all defenses which the maker of the note (the buyer) might have had against the payee of the note (the seller). That means that even if the set were no good, or even if it had not been delivered, the "holder" of the note could collect from the buyer on the note.

(i) A "holder in due course" is a person who buys (gives real value for) a note in good faith (that is, he's not trying to cheat anyone) without notice that there is anything wrong with the note or with the transaction which produced the note (the sale of the hi-fi set). The holder doesn't have very much duty to investigate, either.

(ii) Defense which remain

(a) Infancy or incompetency

(b) Falsification which induces someone to sign a note without knowing that it is a note.

(iii) Emphasize: Except for the narrow defenses above, no defense exists against a holder in due course of a note. **Even if the hi-fi set exploded when you turned it on, you would have to pay the holder of the note.** (of course, you could still sue the seller for breach of warranty, but that is another problem and the buyer has to sue, rather just refuse to pay).

(iv) Under a 1974 Missouri statute, the rights of a holder of a credit instrument (usually a promissory note) signed by the purchaser of consumer goods, are subject to all the defenses and set-offs of the buyer is the seller has arranged for the loan to be extended by another person, receives a fee or compensation for doing so, or has knowledge of the loan and has participated in the preparation of the instrument. The rights of the buyer, however, must be asserted within 90 days after receipt of the goods. To this extent, the provisions of the Uniform Commercial Code relating to holders in due course, are modified.

6. (Optional — highly technical). Limitation on the terms the seller can impose on the buyer as part of a retail credit sale.

(a) Usury

(i) Legal rate 10% and about 15% for small loans.

(ii) If ususrious, lender can get back only principal but **no** interest.

(iii) Does not apply to "service charges" on time sales (time price doctrine) i.e. extra amount charged for paying over a period of time is **not** considered "interest" off purchase (but see b, below).

(b) Retail Credit Sales Act. Mo. R.S. 408.250-370

(i) Covers **all** retail credit sales, no matter how formally described, (e.g., chattel mortgage, conditional sale, bailment lease, unsecured charge accounts) up to $7,500.

(ii) Limits the amount of time charge, i.e., makes a special usury type statute applicable to time charges.

(iii) Buyer must be given copy of contract.

(iv) No waiver by buyer of seller's liability permitted.

(v) Itemized breakdown (only more or less fully informative) of price, time charge extras, insurance charges, etc., must be in contract.

(vi) Remedies for violation by seller:

(a) If done knowingly, a misdemeanor.

(b) Otherwise, seller cannot collect any time charges, but only the base price (i.e., similar to Missouri usury remedy).

(c) Accompanying sales transaction also voided or rescindable.

(c) Special statute in Missouri covering cars: different time charges permitted, buyer **can** waive liability of seller.

F. CONTRACT SAYING CONSUMER WILL PAY WHOEVER HOLDS THE NOTE:

Martha bought a dress on credit and signed a contract saying she would pay whoever held the note. The dress shrank to an unusable size when washed. Must Martha pay the finance company which now holds her contract? Is the finance company responsible for her problem? Why should she pay them? Why not? (See discussion under E, 3, b and E, 5, above).

G. INTEREST ON INSTALLMENT PURCHASES — TRUTH-IN-LENDING:

Bill's furniture store is located in a ghetto area and caters to low income consumers. Almost all of his sales are on credit. He charges about 30 per cent interest on his installment loan contracts. How can the city or the state stop this abuse? What techniques can Bill use to circumvent the "usury" laws? Will really effective legislation simply drive Bill out of business? The Federal Truth-In-Lending approach depends on full disclosure of the credit terms to prevent abuse. Will this be effective in this situation? What type of consumer is the law designed to help? Is full disclosure effective when the only contract available is one designed by the seller? How do we enforce this law? Is the buyer likely to be able to sue the store?

1. Federal Truth-In-Lending Law.

(a) The Federal Truth-In-Lending law requires that a seller, **before** he extends credit to a consumer, must disclose to the consumer (1) the cash price of the goods or services being purchased, (2) the amount of any trade-in allowance, (3) an itemized list of all other charges which are not included in the finance charge, (4) the amount of the finance charge, (5) the finance charge expressed as an annual percentage rate on the declining balance, (6) the schedule of payments, and (7) any penalty charges. The purpose of the law is to enable consumers to be able to compare how much more they will have to pay if they buy on time rather than pay cash.

(b) Advertisements which contain a reference to the rate of finance charges or the amount of installment payments, must disclose the finance charges expressed as an annual percentage rate and the terms of payment.

2. Time Price

(a) Automobile dealers, household appliance dealers and furniture dealers, as such, are not engaged in the business of lending money, but are engaged in the business of selling their merchandise. The Missouri law does not fix the price which these sellers can charge for the things they sell. Accordingly, they may have different prices for the same thing, and they may choose to place one price on, for instance, an automobile, if payment is to be in cash, and a different and higher price if the purchaser is to pay in installments over a period of time. The difference between the cash selling price and the price charged for the privilege of paying on time is not interest and the Missouri law does not impose a limit on it, except in the case of automobiles.

When you buy an automobile, appliances or other goods at retail and on a time purchase, the law requires your seller to outline on your contract the time and cash price difference, charges for insurance and other costs. If you read your contract before signing, you can know how much buying on time can cost you.

It is important that you know the difference between (a) the cash price, (b) the time price, and (c) the cost to you in interest if you borrow the money to buy the article. Having determined these three amounts, you can then make a decision as to how you wish to act. (See H, 2 (b), below)

3. Interest Rates

(a) If you borrow money, the Missouri law fixes the maximum rates of interest that you can be charged. By written agreement with the borrower, any lender may charge up to 10% per year simple interest. In practice, the interest rate charged may vary and depends on the size of the loan, your credit rating and collateral which you give to secure the loan.

(b) Lenders, operating under the Consumer Credit Law, may, on loans of $500 or less, charge interest at the rate of 2.218% per month on the unpaid principal balance. You will see, of course, computed on an annual basis that the interest rate per year could be approximately 26%, more or less, on the unpaid principal balance.

(c) Usury (interest in excess of the legal rate) may be pleaded as a defense to an action based on a security agreement or any other kind of a lien given to secure an indebtedness.

H. BAIT ADVERTISING

Mr. and Mrs. Jones have wanted to purchase a TV set for less than $100 because they could not afford a more expensive one. Ajax store runs an advertisement in the daily newspaper in which is advertised a 20 inch portable TV set for $89.95. They take this advertisement from the daily newspaper to Ajax store intending to purchase this set.

The store salesman tells Mr. and Mrs. Jones that all of the advertised portable TV sets for $89.95 have been sold, but even if they had one of the $89.95 sets to sell them, they would not want to purchase one of these "cheap" sets, but would prefer one of the better portable TV sets which sell for $125. After being shown this "better" TV portable for $125, Mr. and Mrs. Jones decide that by cutting corners they might just be able to pay for the set, particularly after the salesman advises that Ajax store has very low, low and liberal weekly payments. (The cost of this TV set would be the same as a package of cigarettes a day.)

Thereupon the salesman has Mr. and Mrs. Jones sign "a few papers" without any down payment. Mr. and Mrs. Jones take the TV set home and proceed to pay the sum of $3.50 per week for six months. At the end of six months, Mr. Jones is laid off from work. His wife, however, continues to work at her two days per week housekeeping job, for which she receives $7 per day. Their total weekly income (including Mr. Jones' Unemployment Compensation) is $44 per week.

The Jones fail to make two weekly payments and fall behind $7. Ajax calls and tells them to pay the entire balance of $116 or Ajax will pick up the set.

What happened to the Joneses?

1. Advertisement by Ajax in newspaper not an offer.

   (a) Under law of contracts an acceptance of an offer makes a contract binding on both parties. However, an advertisement is not considered by law "an offer," but is merely an invitation to the public to do business in general.

   (b) Ajax advertisement which stated that it would sell a particular TV set for $89.95 placed no legal obligations on Ajax to sell a set for this advertised price. (Some state exceptions, such as New York).

   (c) Usually this type of advertisement is referred to in the trade as "bait" advertising or a "loss leader."

2. "The papers" signed by the Jones were:

   (a) Promissory Note

      (i) A negotiable instrument which contains the purchaser's promise to pay the time purchase price of the purchased article in equal installments on specified dates until paid.

      (ii) Can or cannot contain a prepayment clause. (See B, 2, above)

      (iii) May also contain an acceleration clause. (See B, 2, above)

      (iv) May contain a clause providing for payment of attorney's fees and/or collection costs if same become necessary.

   (b) Charges for Time Purchasing

      (i) Interest charge for purchasing an item over an extended period of time rather than by cash may be interest. The maximum amount of interest that can be charged is controlled by Missouri statute.

      (ii) Time Price — difference between cash price and extended time price could be "time price." The "time price" is not interest and therefore not controlled by statute. Thus, whatever a merchant chooses to charge as such is legal under the present law. (See G, 2, (a) above).

(c) Release of Promissory Note and Chattel Mortgage

(i) Upon payment of note, purchaser should obtain note and chattel mortgage from seller with both instruments marked "paid."

(ii) Purchaser should thereupon take these instruments to the Office of the Recorder of Deeds and have said Recorder mark in the appropriate book where the instruments are recorded that these obligations have been satisfied.

(iii) If purchaser cannot obtain the aforementioned instruments from the seller, he should obtain from the seller a notarized release showing that full satisfaction of the debt has been made.

I. Home Solicitation Sales

A salesman calls at the home of Mr. and Mrs. March and sells them a vacuum cleaner. They pay him $10 down and sign some papers, including a note and contract of purchase which includes a cancellation form as required by law. Later, Mr. and Mrs. March decide they have made a mistake in purchasing the appliance. What can they do?

1. Rights and Obligations of the Buyer.

a. Under Missouri statutes, if before midnight of the third day after the purchase and the signing of the papers they notify the seller in writing (using the notice of cancellation provided them, if they wish) the sale is cancelled.

b. They must return any goods delivered to them in substantially the same condition as they received them.

2. Obligations of Seller

a. Within ten days after the receipt of the notice of cancellation, the seller must return any down payment made by the buyer and any note or other evidence of indebtedness with the word "Cancelled" on the face.

b. The seller must return within a reasonable time (20 days) any goods taken in as a trade-in in substantially the same condition as when he received it.

Note: These provisions apply only to sales which originate in the home of the buyer and do not apply to sales made pursuant to prior negotiations between the parties at the seller's established place of business.

J. Unordered Merchandise

Householders are still asking whether or not they are obliged to return unsolicited items they receive in the mail, or pay for them if they keep and use them. No, answers the U.S. Postal Service: "Any unsolicited or unordered merchandise may be treated as a gift by the recipient, who has the right to retain, use or dispose of it in any manner without any obligation whatsoever to the sender."

"Unordered merchandise" means merchandise mailed without prior expressed request or consent of the recipient.

K. THE POWER OF CREDIT

John and Mary Young applied for a charge account at a major store. Shortly thereafter, the store manager notified them that their credit was bad and he could not let them open a charge account at his store. John told the store manager that there must be a mistake as he had never bought anything before on credit. Does John have any rights under the law?

1. Yes. The Federal Fair Credit Reporting Act allows John some remedies. First of all, the store or business that denied John credit must reveal its source of information (usually the local retail credit bureau — a private credit-collecting information agency for merchants). Then John may go down to the credit bureau agency and personally examine his credit file to find out why his credit rating is said to be bad. Most information cannot be used to hurt John's credit rating if the information is over 7 years old. If John finds something in his file which he believes is untrue or misleading, he may request that the credit information agency investigate the information. The results of this investigation must appear in his file. If the poor credit rating is found to be based upon untrue information, then the information must be removed from John's file. If the investigation doesn't back up John's story, then he is allowed by law to submit a written statement for his file, explaining his side of the circumstances behind the damaging information in his credit file.

L. THE HOPELESSLY OVER-EXTENDED DEBTOR — REPLEVIN — BANKRUPTCY:

Mr. and Mrs. West went on a shopping spree immediately after they got married. They bought a home (with a mortgage, of course), furniture, and a car on time, and a great deal of clothing and other goods on their charge accounts at local stores. Mr. West then lost his job and had to take one paying a great deal less. He can't meet any of his payments as they come due, he has borrowed heavily from small loan companies, and he is being driven crazy. What will happen and what can the Wests do to get out from under and start afresh?

1. All of the goods in which the seller or lender kept a security interest can be repossessed by him, sold, and then the Wests may remain liable for the amount still due. This would cover the house, the furniture and the car. (see E, 5, above).

2. Repossession and replevin of goods sold on time under installment contracts after the buyer has defaulted on a payment are common occurrences, especially in lower income neighborhoods. Since title to the article remained in the seller until the buyer made his final payment, upon default the seller can repossess the article, the theory being that the buyer no longer has any legal or equitable title in it.

   Usually the seller will hire a collection agency to accomplish the repossession. It has been the law in most states that the collection agency can take the article from the defaulting party without giving notice or first going to court, even if the buyer has a good defense which would cure the default. There are many true stories where the collection agency has repossessed an article from a buyer by breaking into the buyer's house either at night or during the day when no one was at home, or by threatening physical harm to the buyer or members of the buyer's family if any attempts were made to prevent the repossession.

   However, the United States Supreme Court has ruled that the pre-judgment replevin laws of Florida and Pennsylvania which authorized summary seizure of goods and chattels by state agents upon an ex parte application by the seller who posted a security bond for double the value of the property were unconstitutional in that they violated the Due Process Clause of the Fourteenth Amendment. The Court held that due process requires the giving of notice to the buyer and a fair hearing before chattels can be taken from his possession, notwithstanding that the buyer could regain possession by posting his own security bond and notwithstanding that he would have an opportunity for a post-seizure hearing. In reaching this conclusion the Court stated that it was immaterial that the buyer under a conditional sales contract lacked full legal title to the replevined article, or that the articles involved were household goods, rather than absolute "necessities" of life. The Court also held that the language of the conditional sales contracts involved authorizing the seller to "take back," "retake," or "repossess" the goods upon default did not constitute a waiver of the buyer's due process right to a prior hearing.

The Missouri replevin statutes seem to fall within this decision and their validity is now being tested in a case before the Missouri Supreme Court.

3. The department stores and the small loan companies have no specific security interests, but if they are not paid they can sue for the amounts owed.

   (a) An actual lawsuit is necessary if buyer wants to defend, i.e., confessions of judgment are illegal in Missouri.

   (b) Except in very rare circumstances (attempted flight, concealment, etc.) no prejudgment attachment or garnishment in Missouri.

4. After the unpaid creditors get judgment against the Wests, they

   (a) Can seize ("attach") and have sold for their benefit all of the West's property (except exempt).

   (b) Can "garnish" the Wests' wages —

      (i) Only up to 10% of the amount earned if garnishee is head of family.

      (ii) Bad effect on employment of **any** garnishment.

5. Exempted Property, i.e., property that creditors with judgments **cannot** seize and sell:

   (a) Wearing apparel.

   (b) Furniture up to $200 (but not exempted if given as security to seller when bought).

   (c) Food on hand.

   (d) Books and tools of trade.

   (e) $500 in cash or property.

   (f) Homestead (in a city, $3,000 worth of house **If** debtor is head of family).

   (g) Property of Mrs. West unless she was also a debtor. NOTE: A Wife is not obligated to pay her husband's debts with **her** own property or earnings even if she used the goods bought which led to the debt. For instance, just because she sat in a chair her husband bought, she doesn't owe the department store anything. BUT intelligent lenders usually get both husband's and wife's signatures on loans or credit sales.

6. Bankruptcy

(a) If a man is insolvent (his assets less than his liabilities) he may file a petition in bankruptcy. The idea of bankruptcy is that a court takes control of all of a debtor's property (except exempt) and divides it fairly among all of the people to whom the debtor owes money. As soon as that is done, the debtor is sent forth "discharged," that is, he no longer owes anyone anything and can start fresh.

(i) Note that all property exempt (5, above) is also exempt in bankruptcy.

(ii) Must locate lawyer willing to prepare petition (and find some way to assure him that he's going to get paid a reasonable amount).

(b) There is a procedure under Chapter XIII of the Bankruptcy Act by which a wage earner may have the bankruptcy court put a plan of lesser and slower payments to a vote of the debtor's creditors, and if a majority of them agree, **all** of the creditors are bound to accept this new payment schedule. The advantage of this is that the debtor **in theory** does not have to have all of his property wiped out before he can start again. In practice this Ch. XIII procedure is very rarely used and seems unlikely to be very advantageous to consumer debtors.

(c) Limitations upon completeness of discharge (i.e., from getting a clean slate):

(i) Any attempt to hide assets, destroy records, etc., will lead to denial of discharge altogether.

(ii) The following debts are not dischargeable:

(a) Taxes

(b) Credit gotten through materially false statements respecting financial condition (VERY IMPORTANT).

(c) Various intentional torts

(d) Negligence claims unless negligence action filed prior to petition in bankruptcy.

(d) Debt can be "reborn" if discharged bankrupt makes a written promise after bankruptcy to pay.

III. Points to Remember

(The Consumer Law handout sheets at the end of the materials should be distributed and gone over in detail.)

IV. General Policy Issues

A. Pollution

What should we do to stop pollution? Should the courts shut down factories causing pollution? Should the government set up maximum permissible pollution limits and impose a tax or fine on industries which go over that limit? What, if anything, should be done about deep-dye toilet tissue, non-returnable bottles and cans, detergents, cars, etc.?

B. Dangerous Products

How should the government encourage manufacturers to make safe cars and other products? Should Congress set standards? Should individuals be able to sue with the burden on manufacturers to show why they were not at fault if a consumer can show he was injured? Who should decide if a toy is dangerous to a youngster — his mother or the government? Does the government have any right to restrict cigarette ads and force the placing of warnings on the packs — why not let the individual decide for himself? Why should a motorcycle operator have to wear a helmet if the only one he could harm by not wearing a helmet is himself? What are Ralph Nader and his raiders trying to prove? Should the government license the manufacture of all consumer goods?

C. Credit Cards

The average American family has 6 credit cards. $100 million is lost each year by thieves using stolen credit cards. Who should have to pay for this loss — the consumer whose card was stolen or the company that issued the card? Should companies be forbidden from sending out unsolicited credit cards? Should the law require that companies make very careful checks on a person's credit, issuing cards only to those who can easily afford them? Should every American family have a right to $5,000 worth of credit a year, to spend as they wish, and use this system instead of welfare?

D. Buying in Ghetto Stores

Should stores in poor neighborhoods be allowed to charge more than stores in rich neighborhoods? Should they be allowed to sell shoddy merchandise (low quality food)? Should a salesman be required to tell you the truth, or is it all right if he exaggerates or lies a little? Should producers of grocery products be required to label their goods so it is easy to compare prices and amounts?

Should all buyers be treated alike? Consider price differentials in ghettos — cost differentials in ghettos — price increases in ghetto stores on days welfare checks are issued? How should prices be equalized — consumer pressure or government regulation?

E. Maximum Interest Rates

Do maximum interest rates protect the consumer? Would you loan money to a man who worked part time and had changed jobs three times in a year? Can he borrow if he pays high interest? Is he being hurt? Should he be able to borrow?

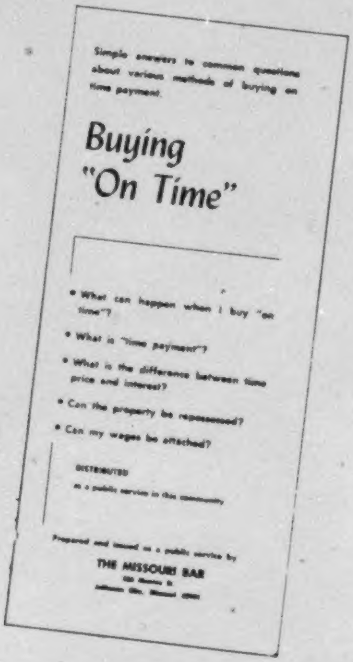
F. Ability to Contract

Mrs. Romerez came to town from Puerto Rico last September. She wants to buy a sewing machine on time. The store manager is afraid if she signs a contract, it will not obligate her because she can not read English. What can be done to help her buy the machine? What can the store owner do to protect himself?

ADDITIONAL MATERIAL FOR THE STUDY OF CONSUMER LAW

The pamphlet pictured below is available in reasonable quantities for classroom distribution at no cost. Requests should be mailed to:

The Missouri Bar
326 Monroe St.
Jefferson City, Mo. 65101



Simple answers to common questions about various methods of buying on time payment.

Buying "On Time"

- What can happen when I buy "on time"?
- What is "time payment"?
- What is the difference between time price and interest?
- Can the property be repossessed?
- Can my wages be attached?

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THE MISSOURI BAR

HOUSING LAW

Everyone eventually becomes a housing tenant and many eventually buy a house. Whether you rent or buy, a large portion of your wages or salary will go to pay your rent or buy your house. If you buy a house, it will probably be the largest purchase of your life. If you rent, you may eventually put more money into your apartment or house than any other item which you will own in your lifetime. For these reasons, housing law is very relevant and important to high school students.

I. Renting a House or Apartment

A. Before you agree to rent:

1. Inspect thoroughly — does everything work — don't accept oral promises made by the owner that he will repair the premises.
2. Ask to see a copy of the lease — don't take the apartment, pay a deposit and move in before you have seen it — it is tougher to walk out if you do.
3. Read the lease thoroughly. (Part I C of these materials contains a discussion of what to look for.)
4. If you don't understand all of the lease's provisions, ask the owner for a copy and take it to a lawyer or knowledgeable friend and go over it with him. (If the owner won't let you have a copy of the lease for this purpose, you don't want to deal with him.)
5. Never sign a lease or any other contract which has empty blanks in it — they may not be filled in later as you agreed orally with the owner.
6. Get a copy of the lease for your own records and the name, address and phone number of both the manager and landlord (if possible).

B. Renting Without a Lease

A landlord may not require a lease. If you don't have a lease, the law calls you a tenant-at-will. Consequences:

1. Less security, but more freedom for you, especially if you were not required to pay a security deposit.
2. **Either** party may terminate the lease by giving one month's notice.
3. A lease usually prohibits subleasing. If you don't have a lease, **you** may re-rent your apartment to another.

C. The Lease

A lease is a contract between a landlord and a tenant and should be in writing. This contract, or agreement, contains the legally binding rights and duties of both parties. Basically, it gives the tenant the right of temporary possession and control of the landlord's property; in exchange for this, the tenant pays the landlord rent. The lease may be either written or oral (spoken). Because of an ancient law called "the Statute of Frauds," all contracts — including leases — which extend for a year or more should be in writing. That way, there is ready proof of what duties both parties agree to assume. For your protection either as a landlord or a tenant, it is usually wise to specify the exact manner in which the lease may be terminated.

If you continue to occupy the premises after your lease expires, it usually creates a tenancy from month to month, and the landlord may step in at the end of any rent period thereafter and evict you. Eviction proceedings must take place in a court of law. Since this is a technical procedure, each party concerned should be represented by an attorney to insure the proper protection of his rights.

(Form Apartment Lease accompanying these materials should be distributed at this time and its provisions discussed in detail.)

Outline of provisions of a form apartment lease:

1. First paragraph — **never** sign a lease that contains blanks. Be sure and read the lease **after** all blanks are filled in before signing. Carefully note the rental amount and the length of the lease.

   If friends go together and lease together, be sure all are named as tenants and all sign the lease — don't assume all the responsibility yourself.

2. Second paragraph — heart of the lease — tenant gets right of temporary control of landlord's property and in exchange agrees to pay rent for a whole term — the minute you sign you have agreed to pay a full term's (usually a year) rent, whether you stay or not.

3. Numbered paragraphs set forth the duties of the tenant and the rights which the tenant gives the landlord, which for the most part he wouldn't have without a lease. Sometimes the lease also imposes duties on the landlord, but not many.

4. Always look for a provision about repairs — this lease leaves the landlord free from any duty to repair unless the premises are uninhabitable.

5. Paragraphs 1 through 5 tell the tenant what he must do and must not do.

   (a) Paragraph 3 is common — although the tenant is obligated to pay rent for the entire term, he can't have someone else take over the obligation without the landlord's permission — may lose security deposit.

   (b) Paragraph 4 bars all pets — get a **written** waiver from your landlord if you intend to keep pets on the premises.

6. Paragraph 6 makes the tenant liable for nearly all utilities — always check for this and ask whether electricity, heat, and water are included in the rent or not. Note that this paragraph purports to free the landlord from any liability for lack of hot water

even though it is a housing code violation — some leases purport to free the landlord from the responsibility of providing heat except during certain hours.

7. Paragraph 7 is very unfair, but seldom enforced — if your apartment is burned, the lease is not terminated if it can be repaired in 60 days — if it can't be fixed rapidly, the landlord can hold you to the balance of the term after it is fixed — where would you live for 60-90 days while repairs are being made?

8. Paragraph 9 is typically contained in most leases. The first sentence is unfair in that it releases the landlord from any liability for damage to the **tenant's** property caused by the landlord's negligence or that of his agents. Usually, if the question is raised before signing the lease, you can get the landlord to modify this provision.

9. Paragraph 10 contains a very important waiver of rights which the law gives to tenants for their protection — the notices which are required to evict and the right of redemption both are waived here. The last sentence appears to give the landlord the right to seize your furniture, clothes, and appliances, but he can't under Missouri law and you can sue him if he does.

10. Paragraph 11 provides that any more or less permanent addition to the apartment becomes the landlord's property and he has no obligation to pay you for it — i.e., room dividers, bars, wall-to-wall carpet, etc., which could not be removed without leaving the premises in a scarred condition.

11. Paragraph 15 — most landlords require a security deposit in the amount of one month's rent plus a month's rent in advance when you sign a lease — don't expect to get it back promptly when you leave — and don't be surprised if you never get it back, if you leave as the result of a disagreement — to counter this possibility many tenants don't pay their rent for the last month of their tenancy, but that's a risky practice.

12. Paragraph 16 is extremely important — you may be held to a second year's lease of the apartment if you don't give the landlord 60 days notice of your intention to leave — most landlords are reasonable, but mark your calendar.

    You should also always check for a provision such as that contained in the next to last sentence of this paragraph. It gives the landlord an absolute right to terminate the lease and this is a valid provision in Missouri. Its effect is to destroy for the tenant any security in the lease.

    Such a provision is often used as a device for increasing the rent over that provided for in the lease. This is accomplished by the landlord giving notice of termination unless the tenant agrees to a rent increase. You should never sign a lease containing such a provision.

13. Paragraph 18 provides that if the landlord **has orally** promised to repaint, repair faucets, etc., you can **not** enforce such a promise unless you make him add it to the lease in writing. (You should ask him to write the provision in the margin next to this paragraph, if possible, and sign his name underneath.) This paragraph also relieves the landlord of the duty to provide the apartment on the date agreed upon.

14. The fact that a provision is contained in a lease does not necessarily make it enforceable in a court of law, especially if it violates a statute or ordinance. Nevertheless, don't ever sign a lease thinking you will be able to avoid an unfavorable

provision because a court will not enforce it. Once you have signed the lease, you may be held to have waived your right to avoid the unfavorable provision. Resolve all questions with the landlord **BEFORE** signing the lease.

15. REMEMBER: After reading the lease with all the blanks filled in, see a lawyer or knowledgeable friend if you don't understand all of the provisions — if the landlord objects to your doing so before signing, you don't want to deal with him. Always get a copy of the signed lease with all of the cross outs and blanks filled in.

    Never accept the landlord's **oral** promise that he won't hold you to what the lease says or that he will decorate or make repairs — get it in writing on the lease and signed by the landlord **before** you sign.

D. Eviction

If you miss a rent payment or otherwise fail to perform all your duties under the lease or make life miserable for other tenants, you can be evicted, but several steps must first be taken by your landlord — he is seldom entitled to lock you out. Even if you are months behind on the rent, your lease is not legally terminated until:

1. The landlord gives notice of default and makes demand on the tenant for payment.
2. A summons is served on the tenant — notice of eviction hearing (five days if personal service — 10 days, if by mail).
3. The tenant is afforded his right to appear and demand jury trial.
4. A period of redemption is allowed — 30 or 60 days to catch up all rent — can't send sheriff until end — (often waived — see paragraph 10).

If term of lease has run out (or lease gives absolute right of termination), you get only five or ten day notice of eviction hearing (summons).

E. Tenants' Rights and Remedies.

If the landlord fails to keep the apartment in repair, or you find a better place, or you can't stand your neighbors, or you take a job on the other end of the city, you may have a real problem:

1. If you move out, you may lose security deposit and be sued for the balance of the year's rent (can't sue until each month ends and landlord must deduct rent if he re-rents the premises after you leave, but he has no duty to re-rent condition of apartment or neighbors may give you the defense of constructive eviction).
2. You can't stay on the premises and withhold payment of rent money, unless there has been a failure to repair common areas — rent strikes are illegal in Missouri — usually you must pay rent no matter what.
3. If landlord's failure to repair or other bad behavior violates housing or health codes you may report it to the City Health Department, but watch out for retaliatory eviction, especially if you do not have a written lease.

F. Housing and Health Code — optional — review city ordinances — discuss what conditions violate the code and who to call — class actions?

G. Rights of a landlord:

1. Right to be paid rent.
2. Right to evict tenant under certain circumstances.
3. Right to restrict tenant's use of premises.
4. Rights other than landlord's common law rights which written lease gives to him (Necessity of reading the lease.)
5. Right to set rent and conditions and terms of lease.
6. Right to refuse to rent to anyone provided refusal is not because of race, color, religion, ancestry, or national origin.
7. A landlord may reserve the right of periodic inspection of his property, but in the absence of a specific provision in the lease he has no right to enter the premises without the tenant's consent.
8. If there is no lease, the landlord may evict the tenant without giving any reason by refusing to accept more rent and demanding that the tenant leave.
9. If there is a lease, the landlord may evict the tenant for nonpayment of rent, or for breaking any conditions which they have agreed upon.

H. Responsibilities of a landlord:

1. Not to violate safety and health codes or city ordinances (Housing Codes).
2. To comply with notice requirements before eviction.
3. To perform certain repairs.
4. To provide the tenant with **quiet enjoyment** of the premises.
5. To meet an implied condition of habitability.
6. In general, to abide by the provisions of the lease.

I. Rights of a Tenant:

1. Right to vacate premises under certain circumstances (constructive eviction).
2. Right to withhold rent under exceptional circumstances or deduct for repairs (rent strikes).
3. Right to avoid eviction proceeding by payment of rent.
4. Unless he violates provisions of the lease, the right of exclusive and undisturbed possession of the property until the lease expires (Right of quiet enjoyment).
5. Right to use the premises in any lawful way so long as he does not violate any specific prohibitions or restrictions of the lease.

6. Right to sublet the premises in accordance with lease provisions.

J. Responsibilities of a Tenant:

1. To pay rent when due.
2. To give notice before vacating.
3. To pay for any permanent damage to property caused by the tenant's wilfull or negligent acts. (Not liable for ordinary wear and tear.)
4. To keep the premises in a safe condition so as to avoid injury to third parties.
5. In general, to abide by the provisions of the lease.

K. Common Landlord-Tenant Problems for Possible Discussion:

1. What to do if tenant misses a rent payment.
2. What to do if landlord threatens eviction.
3. How to vacate and when permissible.
4. What to do about bad plumbing, vermin, bad wiring, heat.
5. To whom should safety code violations be reported.
6. What to do if tenant is injured on landlord's property.
7. Problem of absentee landlords.
8. Rent strikes.
9. Rent control.
10. Retaliatory eviction.
11. Constructive eviction.
12. Reporting housing code violations.
13. Security deposits.
14. Implied covenants of habitability.
15. Repairs.
16. Landlord's power to fix and increase rents and to evict with or without cause.
17. Limiting a landlord's power by lease, rent control, or health and housing codes.
18. The power of the government to condemn land and tear down housing and the power of private institutions and other private landlords to tear down housing they own, in each case for non-housing purposes.

II. Fair Housing

By law it is public policy that every person be permitted an equal opportunity to rent (or purchase) an apartment or house suited to his needs and financial ability, **wherever he would like to live.** No owner or agent may refuse to sell or rent **any** housing or property because of race, color, religion, or national origin. This pertains to apartments as well as single-family houses.

More specifically, what does the Federal Fair Housing Law provide?

The purpose of the Civil Rights Act is to provide fair housing throughout the United States and accordingly, this legislation prohibits seven kinds of discriminatory acts regarding housing **if** the discrimination is based on race, religion, color, or national origin.

1. Refusal to sell or rent or otherwise deal with any person.

2. Discriminating in the conditions or terms of sale, rental, or occupancy.

3. Falsely denying that housing is available.

4. Discriminatory advertising.

5. Blockbusting: Causing someone to sell or rent by telling him that members of a minority group are moving into the area.

6. Discrimination in financing housing by a bank, savings and loan association or other business.

7. Denial of membership or participation in brokerage, multiple listing or other real estate services.

   If you are refused a house or apartment, ask why. If the owner or agent tells you that the property has already been rented or sold and you suspect that he is discriminating, ask **when** it was rented or sold and the name and address of the person to whom it was rented or sold. Then ask him to write it down.

   Watch to see if the "For Sale" or "For Rent" sign is removed and have someone else answer the ad in person or by telephone or both to see if the apartment or home is really rented or sold,

   If you are denied housing because of discrimination, you have one or more of the following remedies:

A. You may place a complaint with the Missouri Commission on Human Rights, Jefferson City, and attempt through this procedure to get the housing you want, or

B. You may file suit for damages and attorney's fees; or

C. If you do not wish to file suit yourself, you may file a complaint with the state attorney general or the U.S. Justice Department who can bring suit inbenalf of the state or the federal government against persons who have had a pattern of discriminating in the sale or rental of housing; or

D. You have a right within 180 days after the discrimination occurred to complain to the

Secretary of HUD by filing the proper form by mail or in person. HUD will investigate and if it finds the complaint is covered by the law and is justified, it will try to end the discrimination by conciliation. In cases where state or local laws give the same rights as federal law, HUD must first ask the state or local agency to try to resolve the problems.

You should report all information about violations to HUD, the Attorney General of the United States or State of Missouri even though you don't intend to complain or go to court yourself.

III. (How to Purchase a Home — Optional)

A. A contract to purchase a home must be in writing in order to be enforceable. If the contract is signed by both buyer and seller, but not by the seller's wife or husband, it can be enforced against the buyer and seller, but not against the seller's spouse and the buyer is not adequately protected. Therefore, the purchaser should be sure that the contract signed is properly binding on the seller (i.e., signed by all the owners and their wives or husbands). Consult your attorney before signing **any** paper, including the "offer to purchase." Look around all you want, but check with an attorney before you sign.

B. The Offer to Purchase

When you have found the home you wish to buy, the real estate agent or owner will ask you to make an offer for it. At the time you sign the offer to purchase, a cash deposit known as "earnest money" is normally required. Once this deposit is made and your offer is accepted by the seller, you are bound by the provisions of the sale contract. It is usually provided that if you are unable or refuse to purchase the property, your cash deposit is forfeited. However, unless otherwise provided in the contract, the seller may require you to buy, or he may recover damages from you for breach of contract in addition to the forfeiture of your cash deposit.

All of your rights are determined by your offer to purchase, which, when accepted, becomes a binding contract to purchase. After all parties have signed this contract it is too late to change any of its terms except by mutual agreement.

The contract or offer to purchase is not just a device to stall off other buyers. It is a document which is at least as important as the deed itself. It should contain a proper description of the property and all of the terms of the sale, including the price, the terms of payment, the type of deed to be given, the date of possession, provisions as to the title and perhaps provisions as to the furnishing of an abstract of title or title insurance. In many instances, special provisions regarding personal property or fixtures may be necessary. There should also be a time limit on the offer — usually 24 hours. If there is no time limit, the owner can use your offer to try to get a better price and you may end up paying more for the property or not getting it. If you omit any of these items in your written offer to purchase real estate you may be obligated to pay the price and not receive what you expected. Any formal real estate contract prepared later should include all of the terms of the offer.

The important thing to remember is that you should consult your attorney **before** you sign the contract or take any formal steps toward the purchase of a house (this doesn't include just "looking"). Do not rely on the assurances of the seller or a real estate agent that "everything is O.K." The purchaser may find that he has relinquished many of his legal rights in the contract by signing too fast.

C. Title and a Title Examination

A marketable title is one which, for all practical purposes, is free of all claims by third parties that would be objectionable to a prospective purchaser. The evidence of such a title must be contained in proper public records.

A title examination is a careful study of the county records, the abstract (history of the ownership of the property), or other title evidence.

D. Title Insurance

If you buy a title insurance policy it is a contract between you and an insurance company. Under the terms of the policy, the company insures a marketable title to the real estate described in the policy. Just as in other insurance, the provisions and coverage will vary. The policy provides the maximum amount which the company will pay.

E. How to Finance Real Estate Purchases

1. Mortgage

2. Contract for deed

   Beware of purchasing real estate by a **contract for deed.** Contracts for deed usually involve great risk for the buyer. If he defaults in a payment he may lose both the property and whatever he paid on the contract. You should not sign a contract for deed without first consulting a lawyer.

F. The Warranty Deed

In a warranty deed, the seller warrants or guarantees the title against the claims of all other persons. If it turns out there are valid claims outstanding, the seller may be sued. A buyer should insist on a warranty deed, but remember, it is not a substitute for a title examination.

G. Closing the Real Estate Transaction

Extreme care should be exercised in closing a real estate sale. At the closing session a final check should be made of all papers to see that the intent of the parties has been carried out. A deed or other document may contain a short sentence which imposes heavy financial responsibilities on the buyer. To protect himself, the buyer and seller should have their attorneys present at the closing session.

In some localities the transfer of title to real estate, in connection with a sale, is handled in an escrow arrangement. The purchase funds and required papers, including the deed, are deposited with a neutral party (known as the escrow agent) whose duty it is to make certain that all provisions of the purchase contract are properly carried out before funds and papers are transmitted to the proper recipients. Then, subject to the approval of the parties or their attorneys, the escrow agent takes care of the details of the closing without the necessity of an actual meeting attended by the parties or their attorneys.

IV. Hypotheticals

A. Tenant family is living in a four family apartment. The family's flat, consisting of four rooms, is on the second floor of the building. The family is renting by oral agreement at $150 a month.

Our family's apartment is heated by a space heater against the wall in the living room* — as well as a gas heater attached to the kitchen stove. There is no central heating.* The hallway and stairs are lighted by electric bulbs controlled by a time switch that stays on two minutes.* The hallways are not maintained by janitors.*

When the family moved in the landlord promised to provide two more garbage cans. He gave them one, but it was stolen. Now our family, with others, must leave some of its garbage in paper bags for collection.*

Last summer, despite promises from the landlord, screens were not provided for all the windows.* During heavy rains and melting snow, water enters the basement.*

When the family moved in they were aware of the lack of central heating. They did not notice the hall lighting arrangement. The landlord made no promises except for the garbage cans, and later, the screens.

The family, along with others in the building, has repeatedly requested the landlord to put permanent lighting in the hallway and to repair the basement. They are not pushing for central heat because they are afraid that the cost would cause too great a rent increase. They are angered by the repeated failures of the landlord to keep his promises and also at the failure of the landlord to help in the control of the cockroaches and upkeep of the hallways.

The landlord has threatened to evict one other family if they don't stop complaining and has announced that he will have to raise the rent if demands for screens, basement water-sealing, and hallway upkeep are to be met.

Solutions:

1. Code Enforcement with Rent Withholding Provisions as Defense against Eviction and Rent Increase.

Considerations: (to be amplified if necessary)

1. The mechanics of Code Enforcement and Rent Withholding.
2. Discuss advantages of written lease for years over oral lease ... particularly in security from retaliatory eviction' ... also value of oral promises.
3. What happens if total rent collected is not sufficient to cover cost of necessary repairs ... who is to be held responsible?

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* Code violation.

HOUSING LAW HANDOUT

APARTMENT LEASE

This Lease made this ______ day of ______________, 19 ______, by and between ____________ ____, the owners of the apartment building located at ____, said owners hereinafter referred to as "Landlord," and ____hereinafter referred to as "Tenant,"

WITNESSETH:

Landlord hereby leases to Tenant apartment ______ on the ________ floor and __________ side, for occupation and use as a private dwelling apartment, and not otherwise, for a term of ________________ beginning on the ______ day of ____________, 19______, and ending on the ______ day of ____________, 19______, unless sooner terminated as hereinafter provided, at a total rental of ______________, payable in equal monthly installments of ____________ each in advance on the ______ day of each calendar month during the lease term at the office of ______________________, Kansas City, Missouri, or at such other place as may be designated by Landlord from time to time in writing.

The parties hereto further agree as follows:

1. **Care of premises:** Tenant shall take good care of the leased premises, fixtures, and appurtenances thereto, and keep them in good repair, free from filth, overloading, danger of fire, explosion or any nuisance, and return the same to Landlord at the expiration of the term, in as good condition as when received by Tenant, reasonable wear and use, damage by fire or other casualty not caused by the negligence of Tenant, his family, guests or servants excepted. If Tenant fails to do anything required of Tenant in this paragraph or elsewhere in this Lease, within a reasonable time after it should be done, Lnadlord may, at Landlord's option, perform the same and Tenant shall repay Landlord the actual cost thereof as additional rental hereunder on the next succeeding rental date after Landlord notifies Tenant in writing of the amount thereof, Tenant agrees to hold Landlord harmless from any liability arising from injury to person or property caused by any act or omission of Tenant, his family, guests, servants, assignees or subtenants.

2. **Alterations.** Tenant will not, without Landlord's written consent, make any alterations in the leased premises and will not deface or permit the defacing of any part of the leased premises. Tenant shall comply with all insurance regulations so the lowest fire, lightning, explosion, extended coverage, and liability insurance rates may be obtained; and nothing shall be done or kept in or on the premises by Tenant which will cause an increase in the premium for any such insurance on the premises or on any building of which the premises are a part or on any contents located therein over the rate usually obtained for the proper use of the premises permitted by this Lease or which will cause cancellation of any such insurance; and Tenant further agrees to comply with all city ordinances and the laws of this state and to save Landlord harmless for or on account of all charges or damages for nonobservance thereof.

3. **Assigning or Subleasing.** Tenant shall not assign, transfer or encumber this Lease or any part thereof, without written consent of Landlord and shall not sublet or allow any other tenant to come in with or under Tenant, without like written consent. The consent of Landlord to any such assignment or subletting, and acceptance of rent by Landlord from any assignee, undertenant or occupant shall not release Tenant from his obligations to pay rent hereunder and to comply with the other conditions of this Lease. If this Lease is assigned by Tenant or the leased premises are sublet or occupied by anybody other than Tenant, Landlord may collect rent from such assignee or sublessee or occupant, and apply the net amount collected to the rent herein reserved, and no such collection shall be deemed a waiver of the covenant herein against assignment and subletting without the consent of Landlord, or the acceptance of such assignee or sublessee or occupant as Tenant, or a release of Tenant from further performance of the covenants herein contained.

4. **Signs and Advertisements.** Tenant shall not display signs or advertisements on the leased premises; nor place or keep anything on the outer window sills, nor permit parrots, birds, dogs, cats, or other animals therein nor install any exterior aerial antennae for radio or television, nor place obstructions in the entrances and hallways appurtenant to the leased premises nor allow children to play therein; nor do or permit children or guests to do any other thing that will annoy, embarrass, inconvenience or damage the premises, Landlord or other tenants in said apartment building.

5. **Rules.** Tenant will observe and comply with such reasonable rules as Landlord may prescribe on written notice to Tenant for the safety, care and cleanliness of the building, and the comfort, quiet and convenience of other occupants of the building, including but not limited to the rules and regulations printed on the back of this Lease.

6. **Utilities.** Tenant shall furnish and pay for all electricity, gas, fuel, and other services used in or assessed against the leased premises except hot and cold water in reasonable quantities which Landlord agrees to furnish. Landlord shall not be held for damages in case of failure to furnish hot or cold water during any portion of the lease term if such failure is beyond Landlord's control.

7. **Damage by Casualty.** In the event of damage to the leased premises by fire, explosion, providential means or any other casualty, without the fault of Tenant, if the damage is so extensive that it cannot reasonably be repaired within sixty days after the date of such damage, then the term hereby created shall terminate as of the date of such damage and rent shall cease as of such date on the condition that Tenant forthwith surrenders the premises to Landlord. In all other cases where the leased premises are damaged by fire or other casualty without the fault of Tenant, Landlord shall have the option to terminate this Lease by giving written notice of its intention to do so within five days after such casualty, or Landlord, at its option, may elect to repair the damage with reasonable dispatch, and if the damage has rendered the premises untenantable, in whole or in part, there shall be an apportionment of rent until the damage has been repaired. In case of such damage, whether this Lease is terminated or not, Tenant shall remove all of the rubbish and debris of Tenant's property within five days after written request by Landlord and, if this Lease is not thereby terminated, Tenant shall not do anything to hinder or delay Landlord's work of repair and will cooperate with Landlord in such work. Landlord shall not be liable for inconvenience to Tenant by making repairs to any part of the premises or building, nor for the restoration of any improvements made by Tenant, nor for the restoration of any property of Tenant.

8. **Eminent Domain.** If the leased premises, or any part thereof, are taken by virtue of eminent domain, this Lease shall expire on the date when the same shall be so taken and rent shall be apportioned as of said date. No part of any award for the leased premises, however, shall belong to Tenant.

9. **Landlord's Liability.** All merchandise and property in or about the leased premises shall be at Tenant's sole risk, and Tenant does hereby, now and forever, release Landlord from any claims for damages, howsoever caused. Landlord shall not be liable for damages or injury to any person occurring within the leased premises, unless proximately caused by or resulting from the negligence of Landlord, its agents, servants, or employees in the operation or maintenance of the leased premises.

10. **Default.** If (1) there be default in payment of any rent or (2) there be default in any other of Tenant's obligations hereunder or if the premises be abandoned or vacated and if such default or condition shall continue after ten days' notice in writing from Landlord to Tenant to make good such default or correct such condition, then in either such event, (1) or (2), Landlord may, at Landlord's option, at any time thereafter while such default or condition continues, without further notice or demand or legal process which Tenant expressly waives, declare this Lease terminated and enter upon and repossess the leased premises with or without legal process, free of this Lease; or Landlord may, at Landlord's option, enter upon and repossess the premises, as aforesaid, and as agent of Tenant, relet the same for the balance of the term of this Lease, or for a shorter or a longer term,

and may receive the rents therefor, applying the same, first to the payment of the expense of such reletting, including brokerage, cleaning, repairs and decorations, and then to the payment of rent due and to become due by this Lease and performance of the other covenants of Tenant as herein provided; and Tenant agrees, whether or not Landlord has relet, to pay to Landlord the rent and other sums herein agreed to be paid by Tenant, less the net proceeds of the reletting, if any, as ascertained from time to time, and the same shall be payable by Tenant on the days above specified for the payment of rent. Tenant hereby waives all right of redemption to which Tenant or any person claiming under Tenant may be entitled by any law now or hereafter in force. If any such default be other than for non-payment of money, and it would take more than ten days to cure the same, Landlord shall not terminate this Lease or enter upon the premises for such default if Tenant begins to cure such default within ten days and prosecutes the cure thereof with due diligence to completion. Tenant shall pay to Landlord the amount of any reasonable legal or attorney's fees if Landlord must take legal action to compel performance by Tenant of his obligations hereunder or any legal action in connection with Tenant's tenancy hereunder. All monies which may become owing by Tenant to Landlord under this Lease, shall be and are secured by express lien hereby created and retained upon all property of Tenant now or hereafter placed in the leased premises.

11. **Fixtures.** All repairs, improvements, alterations, additions, installations, equipment and fixtures, by whomsoever installed or erected shall belong to Landlord and remain on and be surrendered with the leased premises as a part thereof at the expiration of this Lease.

12. **Waiver.** A waiver by Landlord of any default or breach hereunder shall not be construed to be a continuing waiver of such default or breach, nor as a waiver or permission, express or implied, of any other or subsequent default or breach.

13. **Notices.** Any notice to Tenant required by law, lease or otherwise, shall be sufficient if delivered to Tenant or a member of Tenant's family personally, or if sent by first class mail, postage prepaid to Tenant at the leased premises or if affixed to the door of the leased premises. Any notice of intention to vacate, or any other notice from Tenant to Landlord, shall be in writing and delivered personally to the Manager of the Project, or delivered to the office of the Landlord.

14. **Subordination.** This Lease shall be subject and subordinate at all times to all ground leases and mortgages or deeds of trust which are now or may hereafter be a lien on the leased premises. Although no instrument or act on the part of Tenant shall be necessary to effectuate such subordination, Tenant will, nevertheless, execute and deliver such further instrument subordinating this Lease to the lien of any such mortgage or ground lease as may be desired by the mortgagee or any person in interest. Tenant hereby appoints Landlord his attorney in fact, irrevocably, to execute and deliver any such instrument for Tenant.

15. **Security Deposit.** Landlord acknowledges receipt from Tenant of ____________ dollars as security for the performance of Tenant's obligations under this Lease. To the extent that said sum shall remain unapplied to such performance at the expiration of this Lease, said sum shall be returned by Landlord to Tenant if Tenant shall have surrendered possession of the leased premises to Landlord as herein provided. This deposit shall in no manner limit the liability of Tenant nor restrict Landlord from the exercise of any lawful legal remedy to insure said performance. Tenant shall not deduct the amount of said security deposit from any rental payment due hereunder.

16. **Renewal and Termination.** This lease shall be automatically renewed for a term of ________________ at a monthly rental of ______________ subject to all the provisions and covenants herein contained, unless Landlord gives to Tenant or Tenant gives to Landlord written notice of an intention not to renew at least sixty days before the end of the original or any renewal term of this Lease. Landlord shall have the right to terminate this Lease upon giving thirty days' written notice to Tenant of its intention to do so. Rent shall be apportioned from the date of Tenant's vacating the premises within said thirty day period.

17. **Landlord's Right of Entry.** Landlord or Landlord's agent may enter the premises at reasonable hours to examine the same and to do anything which Landlord may deem necessary or advisable for the good of the premises or any building of which they are a part; and within one month before the termination of this Lease, Landlord may display a "For Rent" sign on the premises and show same to prospective tenants. If Tenant shall not be personally present to permit any such permissible entry into the premises, Landlord may enter same by a master key, or forcibly, without being liable in damages therefor and without affecting the obligations of Tenant hereunder.

18. **Representations.** Landlord has made no promise to alter, repair, decorate, or improve the premises nor any representations as to the condition and repair of the premises except as are set forth herein, nor has either party made any representation or promises except as contained herein. If Landlord shall be unable to give possession of the premises on the commencement date of this Lease for any reason, it shall not be liable for failure to do so. Tenant's liability for rent shall not commence until possession is given or the leased premises are available for occupancy by Tenant. No such failure to give possession shall in anywise affect the validity of this Lease. Tenant's entry into possession of the leased premises shall be conclusive evidence that the leased premises and the building of which it is a part are in good and satisfactory order and repair at such time.

19. **Successors.** The provisions, covenants and conditions of this Lease shall bind and inure to the benefit of the heirs, legal representatives, successors and assigns of each of the parties hereto, except that no assignment, encumbrance or subletting by Tenant without written consent of Landlord shall vest any right in the assignee, encumbrance, or sublessee of Tenant. Landlord shall be released from and Landlord's grantee shall be liable for, all liability of Landlord hereunder accruing from and after each grant of the reversion.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year above written to duplicate copies hereof.

____
Tenant

____
Tenant

____
Landlord

ASSIGNMENT OF LEASE

Subject to the consent of Landlord, I hereby assign and transfer to ____________________ ____________________ all my right, title and interest in the within Lease, and said assignee hereby assumes and agrees to pay rent as therein provided and also assumes all of the other unperformed obligations of Tenant under said Lease and agrees that no further assignment of such Lease shall be made without Landlord's written consent.

Dated at ____________________ this _____ day of ______________, 19____.

____
Tenant

____
Assignee

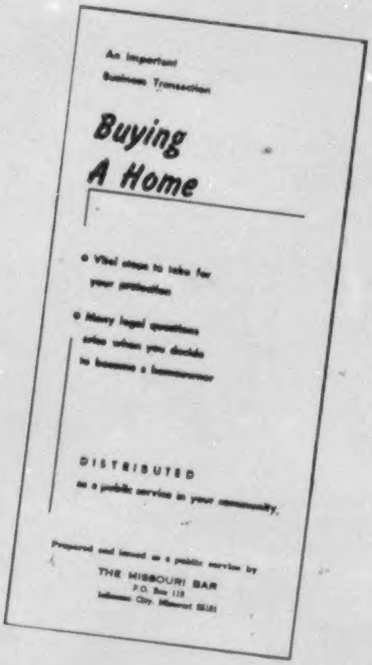
Without releasing Tenant, Landlord hereby consents to the above assignment of this Lease

____
Landlord

ADDITIONAL MATERIAL FOR THE STUDY OF HOUSING LAW

The pamphlet pictured below is available in reasonable quantities for classroom distribution at no cost. Requests should be mailed to:

The Missouri Bar
326 Monroe St.
Jefferson City, Mo. 65101



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FAMILY LAW

I. Marriage

A. Requirements

1. For a girl under 18 or a man under 21, written consent of a parent or guardian is a prerequisite for a license. It is necessary to state on the license the applicant's age and the name of the parent or guardian, if consent is required.

2. If either party is under 15, a court order is required before a license may be issued. Furthermore, the party must show good cause and unusual circumstances before the order is granted.

3. Three day waiting period — Application for a marriage license must be made to the Recorder of Deeds at least 3 days before the license may be issued. After the three day period, the license is received unless one of the parties has withdrawn. An order of the Circuit Court or Probate Court may remove the waiting period, but only where good cause is shown and unusual conditions exist so as to make immediate issuance advisable.

4. Persons closer in relationship than second cousins may not marry. This group includes parents and children, grandparents and children, brothers and sisters, uncles (aunts) and nieces (nephews) and first cousins.

   Neither may an insane or mental imbecile or feeble-minded person marry. However, a presumption of sanity exists. The standard to which a person is held rests on his (her) ability to understand the marriage relationship, not on his (her) ability to manage affairs of finance, etc.

   If an official issues a license to one of the above mentioned, he is guilty of a misdemeanor.

   Common law marriages are null and void in Missouri.

5. Both parties must file with the County Recorder of Deeds the results of a blood test for syphilis unless they have a doctor's certificate that the girl is pregnant or unless one party is on his deathbed and unlikely to consummate the marriage.

   Free laboratory tests are available upon request of the doctor or applicant at the laboratories of the Division of Health or by such other public health laboratories where maintained in Missouri. Such blood tests must be made within 15 days of the issuance of the marriage license.

6. A marriage license is valid for only 10 days after it is issued.

7. The basic fee for issuance of marriage licenses is $3.00. An additional $.25 is required for each affidavit to determine age of applicant.

8. Any applicant for a marriage license who knowingly makes any false statements in his application may be subject to a fine not exceeding $1,000 and imprisonment in the county jail for one year.

9. A party to a divorce should not marry within 30 days after entry of the judgment of divorce by the court, since the judgment can be set aside within that same time period.

10. Marriage Certificate — The person performing the marriage ceremony is required to deliver to the persons married a marriage certificate setting forth the names and residences of the married persons, the date of the marriage, the county from which the license was issued, and the date of the license.

    Any clergyman (active or retired) who is a citizen of the United States, who is in good standing with any church or synagogue in this state; any judge of a court of record; any religious society, institution, or organization of this state according to the regulations and customs of the society, institution, or organization, where either party to the marriage to be solemnized is a member of such, are proper authorities to solemnize the marriage.

B. Marriage is a legal contract between two persons. The state of Missouri also is considered a party to that contract due to the social interest and family obligations.

C. If either husband or wife is under 21 years of age, the marriage ceremony emancipates him or her automatically ending any duty of that person's parent to support him or her.

D. Both husband and wife have an obligation to support each other. It is primarily the husband's duty to provide support for the family. However, under some conditions, the wife may be responsible for supporting the husband.

E. Women's Property Rights in Marriage: A married woman's property owned by her at the time of the marriage remains property under her control.

1. Property ownership:

    (a) Tenancy in common exists when two or more people own an undivided interest in the entire property. Interests are not physically distinct, but are fractional interests in the whole.

    (b) Joint tenancy with right of survivorship is similar to tenancy in common except that if one joint tenant dies, ownership of the entire property passes automatically to the surviving joint tenant or tenants.

    (c) Tenancy by entireties is essentially a joint tenancy with right of survivorship in which the owners are husband and wife. To be a tenancy by entireties, property must be in names of both husband and wife.

        (1) Neither can exclude the other, both spouses are entitled to occupy and enjoy the property jointly.

        (2) Neither can sell or dispose of his or her entirety interest alone.

        (3) If husband and wife acquire real or personal property without specifically designating the type of ownership they are considered to hold the property as tenancy by entireties.

        (4) Joint debts may be collected on property held by entireties but separate debts may not.

(5) Entirety interest of either spouse may be judicially affected only upon notice to both parties.

(6) Unless the entirety interests are given to one party by divorce decree, divorce automatically converts entirety interests into a tenancy in common at which time outstanding judgments or liens against either party are immediately attached to his or her interest.

F. Antenuptial and Postnuptial Agreements

1. Generally, an antenuptial agreement is a property settlement (including any kind of real or personal property) made between a man and woman before their marriage in which one or both parties release his or her respective property rights in the estate of the other. Example: to waive his or her right to take against the will or to take any property from the deceased spouse's estate by inheritance or other statutory rights.

2. Postnuptial agreements are similar to antenuptial agreements except that they are arranged after the marriage.

3. To be enforceable, these arrangements must be fairly entered into (i.e., husband must give a full and fair report of his property).

4. Separation or dissolution of marriage has no effect on these agreements.

II. Dissolution of Marriage

A. Effective January 1, 1974, Missouri abolished divorce as such and substituted a proceeding called "dissolution of marriage." The new act has made major changes in Missouri's domestic relations law, chief among them:

1. The statutory grounds for divorce have been repealed.

2. It is not necessary to show that one of the parties to the proceeding is an "innocent" party.

3. The previously existing defenses to divorce, including but not limited to, condonation, connivance, collusion, recrimination and insanity are abolished.

4. The marriage may be dissolved, or a decree of legal separation, may be granted if the court finds that there is no reasonable likelihood that the marriage can be preserved and, therefore, the marriage is irretrievably broken, and that

(a) **One** of the parties has lived in the state for 90 days, and that

(b) The court has approved, or made provision for

(i) Child custody

(ii) Support of any child entitled to support

(iii) Maintenance of **either** spouse

(iv) Disposition of the property

B. Legal Separation Agreements

1. The husband and wife may now request a legal separation and set forth in their petition a separation agreement with provisions for the maintenance of either of them, the disposition of their property and the custody, support and visitation of their children.

2. Unless the court finds the agreement "unconscionable", its provisions are binding upon the court except those provisions regarding the custody support and visitation of their children.

C. Procedure for dissolution of marriage or legal separation.

1. Uncontested cases

(a) If both parties swear or affirm that the marriage is irretrievably broken, the court, after a hearing, may grant the dissolution of marriage or a legal separation.

(b) If one spouse so affirms and the other has not denied it, the court shall send by registered mail a notice to the other spouse that if no objection is received within 10 days, the marriage may be dissolved after a hearing to be held not less than 30 days nor more than six months after the notice is mailed.

2. Contested cases

(a) If one of the parties denies that the marriage is irretrievably broken, the complaining spouse must satisfy the court that

(b) The other has committed adultery, or

(c) He or she has abandoned the petitioner for six months, or

(d) By mutual consent the parties have lived apart for twelve months, or

(e) They have lived apart, for whatever reason, for 24 months.

3. COMMENT: While grounds for divorce have been abolished and it is no longer necessary to show one of the spouses an "innocent" or "injured" party, it should be remembered that behavior or conduct during the marriage is still an important factor to be considered by the court in contested cases, in the disposition of property, in granting maintenance and in awarding child custody and visitation rights.

D. Child custody

1. The major and controlling factor in awarding custody of minor children and visitation rights to parents is the welfare and happiness of the child, while taking into consideration

(a) The wishes of the child's parents,

(b) The wishes of the child.

(c) The child's interrelationship with the parents and family,

(d) The child's adjustment to his home, school and community,

(e) The mental and physical health of all persons involved.

2. The jurisdiction of the court over minor children now attaches **immediately** on the filing of the petition for dissolution of the marriage or legal separation.

3. While the case is pending minor children cannot be removed, without the consent of the court, from

   (a) The jurisdiction of the court, nor from

   (b) The care and custody of the person who has custody at the time the petition is filed.

4. Each award of care and custody of children must, of necessity, be determined by its own peculiar circumstances and conditions.

E. Maintenance and Support (formerly Alimony)

1. Alimony, which was a reasonable compensation to the wife for the loss of her support caused by the termination of the marriage, has been abolished.

2. In its place we now have maintenance and support which may be granted to **either** spouse.

3. Maintenance may be granted to either party.

   (a) Who lacks sufficient property or income to provide for his or her reasonable needs;

   (b) Who is unable to support himself or herself through appropriate employment, or

   (c) Who is custodian of a child whose condition makes it impossible to seek employment.

4. Under the old law of alimony, a wife who was unemployed at the time of the divorce did not have the duty of attempting to secure employment. She was entitled to continue her unemployed status.

5. Under the new law, the spouse seeking maintenance must provide for his or her own needs if he or she has the ability to do so at the time of the dissolution of the marriage **or at the expiration of a period of time sufficient to enable him or her to acquire the necessary education or training to secure employment.**

   In short, the duty is imposed to provide for one's own needs if there is the ability to do so.

6. Child support

   (a) **Either or both** parents may be ordered to contribute to the support of minor children.

   (b) However, child support is still primarily the responsibility of the father.

III. Annulment

Annulment is different from divorce only with respect to the grounds for attainment. To obtain an annulment a party must prove that something happened prior to or at the time of the marriage ceremony. Common grounds for annulment include marriage between close relatives; one party was insane at the time of the marriage; bigamy; common law marriages; if both parties are minors without parental consent; marriage procured by fraud, duress, or lack of consent; marriage by party under 15 without approval of the Probate Court.

Some of these marriages are void; others only voidable.

IV. Separate Maintenance

A. When a husband has left his wife and refuses to give her any money for her support or the support of their children, the wife may sue for **separate maintenance,** an action which is distinct from that described above as part of the petition for dissolution of marriage or legal separation. In this case, if the wife is awarded support from her husband, neither the husband nor the wife may remarry — there has been no dissolution of the marriage.

V. Failure to support wife or family

A. Any man who, without good cause, fails, neglects, or refuses to provide adequate food, clothing, lodging, or medical or surgical attention for his wife; or any man or woman who, without good cause, abandons or deserts or, without good cause, fails, neglects, or refuses to provide adequate food, clothing, lodging, or medical or surgical attention for his child born in or out of wedlock, under the age of sixteen years, or if any person, not the father or mother, having the legal care or custody of such minor child, without good cause, fails, refuses, or neglects to provide adequate food, clothing, lodging, or medical or surgical attention for the child, whether or not in any such case the child by reason of such failure, neglect, or refusal actually suffers physical or material want or destitution, is guilty of a misdemeanor and upon conviction thereof shall be punished as provided by law.

B. If a husband leaves Missouri to live in another state and doesn't make child support payments, he is guilty of a felony and upon conviction may be put in jail for two years.

Any man who leaves the state of Missouri and takes up his abode in some other state and leaves his child under the age of sixteen years in the state of Missouri, and, without just cause or excuse, fails, neglects, or refuses to provide his child with adequate food, clothing, lodging, or medical or surgical attention shall be guilty of a felony and upon conviction thereof shall be imprisoned by the department of corrections for a term of two years. It shall be no defense to such charge that some person or organization other than the defendant has furnished food, clothing, lodging, medical or surgical attention for said child or children, nor shall this statute be construed so as to relieve said person from the criminal liability defined herein for such omission merely because the mother of such child or children, in case of the father, is legally entitled to the custody of such child or children, nor because the mother of such child or children, or any other person, or organization, voluntarily or involuntarily furnishes such necessary food, clothing, shelter, or medical or surgical attention, or undertakes to do so.

If a husband moves to another state and doesn't make alimony or support payments, his wife may file a petition in Missouri circuit court under the Uniform Reciprocal Enforcement of Support Law or register a foreign judgment in the state in which her husband was found. The return of the guilty party is a matter of discretion for the governor of the state in which the husband has taken up residence.

The governor of this state may:

1. Demand from the governor of any other state the surrender of any person found in such other state who is charged in this state with the crime of failing to provide for the support of any person in this state.

2. Surrender on demand by the governor of any other state any person found in this state who is charged in such other state with the crime of failing to provide for the support of any person in such other state.

The provisions for extradition of criminals not inconsistent herewith shall apply to any such demand although the person whose surrender is demanded was not in the demanding state at the time of the commission of the crime and although he had not fled therefrom. Neither the demand, the oath nor any proceedings for extradition pursuant to this section need state or show that the person whose surrender is demanded has fled from justice, or at the time of the commission of the crime was in the demanding or other state.

If a husband moves to another state and starts to work for a company which does business in Missouri (and is therefore subject to service of process in that state), his wife may have the right to serve a writ of garnishment upon the company in Missouri in order to reach wages due her husband in the other state.

VI. Illegitimate Children

A. The fact that a mother may not be married does not in any way reduce her responsibility to her child. Neither does it reduce the obligation of the father to support the child. A mother's duty is secondary to that of the father. That duty arises at the birth of the child. The duty ceases when the child reaches majority, the child marries, the child enlists or is drafted into the armed forces, or the child abandons the parental roof. The child may also waive the duty by his own voluntary act.

B. Paternity Suit — A procedure has been set up by which an unwed mother can charge a man with being the legal father of her child and have him arrested and brought into court to prove her charge. If he is found to be the father, he can be ordered to pay support for both the mother and child or go to jail. Even without such a proceeding, he is responsible for the support of his illegitimate child.

VII. Rights of Survivor Upon Death of Spouse.

A. If a husband dies and support obligations are based solely on a decree of dissolution of marriage, this obligation dies with him. If it is based on a property settlement between them, she may have the right to have his estate make support payments.

B. Either spouse has the right to take against the other's will, which means that either spouse has the right to disregard the decedent's will and receive the share of property which he or she would have received had the decedent died with no will.

In Missouri, if a man dies with no will and there are no issue, father, mother, brother, or sister, or their descendants, the wife is entitled to the entire estate after claims have been paid. If there are issue, father, mother, brother, sister, or their descendants, the wife is entitled to one-half the estate after claims have been paid. The wife is also entitled in any event to:

1. Support allowance-payments as the surviving spouse for living expenses of herself and any unmarried minor children for one year after death of deceased. The amount of this allowance is usually based on the accustomed standard of living.

2. Exempt property — that property which goes to the wife and unmarried children absolutely, such as the family Bible, books, clothing, appliances, and furniture. However, the spouse may specify in the will that a special bequest under the will shall be in lieu of any and all statutory allowances.

3. Homestead allowance — allowance to surviving spouse of an amount not over half the estate (excluding exempt property) and not exceeding $7,500.00. The homestead allowance is not subject to claims, but does offset the share to which the surviving spouse is entitled as heir of the estate.

4. If the wife decides to take against the will, she receives nothing under the will, but she is still entitled to her statutory share.

VIII. Recovery of Damages on Account of Tortious Injury to Spouse.

Just as a husband may recover monetary damages based upon loss of his wife's companionship and services for injuries negligently inflicted on her by a third party, a wife can recover for such injuries to her husband.

IX. Hypotheticals:

A. Dorothy Livingstone, 17, and James Carter, 18, were both seniors in high school. They had been dating for about a month but usually had to sneak dates since both families did not approve of them dating each other. One evening, tired of school and of their family problems, they decided to drop out of school and get married the next day. Dorothy told her parents who became very upset and finally said, "go ahead, ruin your life, if that's what you want to do!" James didn't even bother to say anything to his family.

1. Could Dorothy and James get married without their parents' permission? Did Dorothy get permission?

2. Can the school prevent them from getting married?

3. If both were under 15, whose permission would they need?

4. Even if Dorothy and James had their parents' permission to get married, could they have gotten married in Missouri on the following day? Why not?

B. Mr. and Mrs. Sea have been married for 3 years and they have two children, John, age 1, and Carol, age 2. About three months ago, Mr. Sea started coming home a little drunk every night from work. Mrs. Sea wasn't very happy about this predicament, but she let it go for a while, hoping things would improve. Things didn't improve. Mr. Sea continued to drink and became violent when Mrs. Sea complained about his late hours and drinking buddies.

One night Mr. Sea came home about midnight and was very intoxicated. Mrs. Sea was waiting up for him. When she saw him come in and go to the children's bedroom, she followed him. What she saw really scared her. Mr. Sea had picked up little John and was slapping him in the face for no reason at all. Mrs. Sea ran to help John and Mr. Sea gave her a couple of belts, too. Finally, Mr. Sea sobered up a bit, so that Mrs. Sea could talk to him. Mr. Sea apologized and said that he didn't know what had come over him. They agreed to drop the matter for the time being.

Unfortunately, the "matter" came up again and again. Mr. Sea is still coming home drunk and beating on the kids and Mrs. Sea. Mrs. Sea is afraid of two things: that Mr. Sea will seriously injure herself or their children; or that he will leave the family and she will not get any money to support the children.

1. Do you think a marriage counselor or trained social worker could help the Sea's with their marital problem? Where does one go for marriage counseling?

2. Should Mrs. Sea seek assistance from the police?

3. If she did decide to ask for a dissolution of the marriage, where would she go for help?

4. If Mrs. Sea does not wish to take this action, is there anything she can do to make sure that Mr. Sea will continue to support her?

5. Suppose that Mrs. Sea was also a drunkard and that she too beat the children when she became intoxicated. If the marriage is dissolved, who will get custody of the children?

6. If Mrs. Sea is granted a decree of dissolution and is awarded maintenance and child support, how long can she receive it?

7. Assuming that Mrs. Sea is awarded maintenance and child support, what could happen to Mr. Sea if he refused to pay it? Can he be put in jail? What if he does not have enough money to pay the required maintenance and child support? Can he still be put in jail?

X. Possible Discussion Topics.

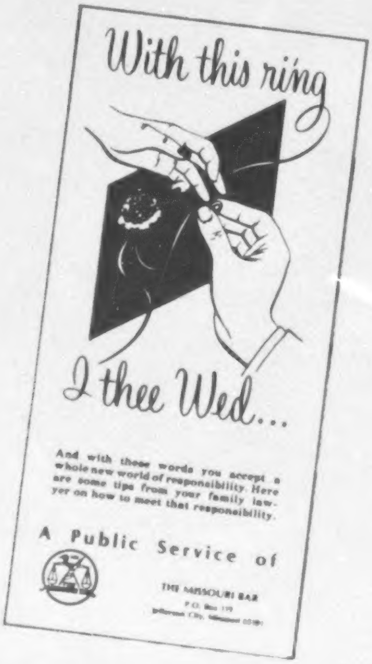
   A. Dissolution of Marriage vs. Divorce

   B. Legal consequences of alternatives to the traditional family unit. (i.e. communes, etc.)

ADDITIONAL MATERIAL FOR THE STUDY OF FAMILY LAW

The pamphlets pictured below are available in reasonable quantities for classroom distribution at no cost. Requests should be mailed to:

The Missouri Bar
326 Monroe St.
Jefferson City, Mo. 65101



And with these words you accept a whole new world of responsibility. Here are some tips from your family lawyer on how to meet that responsibility.

A Public Service of

THE MISSOURI BAR

DISSOLUTION OF MARRIAGE

This pamphlet is not in print yet although it should be available by Fall, 1976.

SCHOOL LAW

In recent years law has had a greater influence on all aspects of our society and the school is no exception. Situations which previously were handled exclusively by the school are now being presented to the courts. Because of judicial involvement in such matters it is important that teachers and students have a better understanding of their legal rights and responsibilities in a classroom situation.

I. **Discipline in the Classroom**

To what extent a teacher may go to maintain order in a classroom these days has become a very clouded issue. Many lawsuits have been filed on behalf of students who have in some manner been disciplined but feel that their rights have been violated. Because of such lawsuits and a misunderstanding about how they arise, many teachers are in a position of not knowing exactly what they can do to maintain order in the classroom.

A. Corporal Punishment

1. The most important general rule that any teacher should remember before administering any form of corporal punishment is that such punishment should be reasonable under the circumstances of that particular case. Corporal punishment is still a valid and lawful method of maintaining order in the classroom but only if it is both reasonable in light of the offense committed by the student and if the punishment itself is administered in a reasonable manner.

2. In determining the reasonableness of the use of corporal punishment factors which should be taken into account are:

   (a) The nature of the punishment

   (b) The misconduct which gave rise to the punishment

   (c) The age, physical and mental condition of the pupil

   (d) The teacher's motive in administering the punishment

3. Examples of acts which may justify corporal punishment.

   (a) Assaulting the teacher

   (b) Abusing other pupils

   (c) Bringing obscene writings and pictures to school

   (d) Injuring or destroying school property

   (e) Insubordination

   (f) Using profane language

   (g) Violating reasonable school rules

   (h) Quarreling or fighting

   (i) Scuffling in school hall

4. Factors to keep in mind prior to administering corporal punishment:

   (a) Don't show anger.

   (b) There is no such thing as reasonable punishment which has arisen from a malicious motive.

   (c) Punishment must be for one reason — "to maintain the discipline and efficiency of the school."

   (d) Don't consent to another teacher acting in anger.

5. Punishment which has been considered reasonable:

   (a) Grabbing the shoulder of a student to lead him from a class in which he had caused a disturbance.

   (b) Pulling a student by the arm out of the teacher's chair which the student refused to vacate.

   (c) The use of reasonable force to eject a rowdy student from the classroom.

   (d) Spanking with either the hand or an object which is not likely to bruise, cut or cause serious harm.

   (e) Punishment should never be cruel or merciless or exceed the bounds of moderation.

6. Punishment which has **not** been considered reasonable:

   (a) Slap on back of neck, causing permanent injury.

   (b) Blow over right ear injuring eardrum permanently — all for tapping pencil on desk.

   (c) Blow on side with book causing kidney problem for failure to work problem at black board.

   (d) Blow with hand injuring caccyx — child required to bend over and grab ankles.

7. Summary of Missouri law.

   A teacher has the right to inflict reasonable corporal punishment upon a pupil for violation of any reasonable rule of the school, but has no right to inflict corporal punishment which is unreasonable and excessive, or with malice, and the proposition that whether punishment is excessive or not is a question of fact which if litigated must be decided by the injury.

II. School Rules

I think no one will question the need for schools to make rules so that the learning process may proceed in an orderly manner. The Law, however, does provide relief to students which may be suffering under rules which violate certain basic legal rights.

A. Interests involved

1. School: orderly, efficient, effective administration of the school. Also, health and safety.

2. Students: formal education with a minimum of restraint on freedom of association and expression of personal and political beliefs.

B. School Dress Code and Hair Length

1. Ask your students if there is a dress code or hair code in effect at their school. The following hypotheticals may be utilized in order to stimulate discussion.

2. Hypotheticals

    a) Black students wear dashikis to high school and are denied admittance by their principal on the ground that they are violating a school rule requiring students to be "reasonably dressed."

    (b) Four high school seniors, all having long red hair with full sideburns are members of a Rock 'n Roll group, Bobby Burns and the Flames, whose latest song is "What a Match You Are." It is important to the group's image as performers to keep their sideburns, but their principal denies them admittance on the basis of a school regulation that boys must be "clean shaven."

3. Courts are split on the issue of length of students' hair. Some courts have held that students do have a constitutional right under either the First or Ninth Amendments to wear their hair in the style and length they desire. Such courts hold that to impair this freedom the state (or board of education) must bear "a substantial burden of justification" for its action. Normally, decisions have not been favorable to students where there was evidence of substantial disruption to the educational process caused by long hair styles or evidence of a health or safety hazard. Other courts, often citing **Ferrell v. Dallas Indep. School Dist.,** 392 F. 2d 697 (1968), have upheld school district regulations banning long hair, finding no constitutionally protected right to wear one's hair as one pleases and refusing to place the burden of justifying the regulation on the school officials.

4. Questions:

    (a) How can a line be drawn between permissible expression of personal beliefs, and activity or appearance which disrupts classroom decorum?

    (b) How does the school balance personal or cultural diversity with dull conformity?

    (c) Should school administrators attempt to make strict and specific dress codes or deal flexibly with each case within a broad standard?

5. For fun, read the following holding from a 1923 opinion upholding a school regulation. This points up the problems in making consistent rulings in times of changing fads:

> The wearing of transparent hosiery, low-necked dress or any style of clothing tending toward immodesty in dress or use of face paint or cosmetics is prohibited.

C. School Newspaper and Book Regulations

1. You may want to discuss last year's controversies at Shawnee Mission South over "Catcher in the Rye" and at UMKC over confiscation of "The Symposium News."

2. A federal appeals court recently ruled that a school board rule requiring advance approval of a student publication prior to distribution is unconstitutional as a prior restraint in violation of the First Amendment. This extends the rationale of **Near v. Minn.** and **Tinker** to schools (**Fujishima v. Board of Education,** (7th Cir., May 4, 1972) 40 L.W. 2970). Where underground publications written and published by students did not cause disruption or materially interfere with the educational process, courts in California, Illinois, Massachusetts, and Texas have held that freedom of press and freedom from prior restraint apply to these publications.

III. The Requirements of Due Process

Ask your students if they know what the rules of their school are regarding suspensions and expulsions. Who has the power to suspend or expel a student? What procedural rights, if any, are afforded a student either before or after the imposition of disciplinary sanctions? Due process? To what extent are school officials subject to a "rule of law" as that concept has developed over the centuries in the adversary system?

Is a hearing a prerequisite to the expulsion of a student in your public school system? Should it be? Should a student at a hearing have the right (1) to a written statement of the "charges" against him; (2) to counsel; (3) to call and examine witnesses? If no hearing is allowed, is a student entitled to a written statement of the "reasons" supporting the decision which was made?

Courts have ruled that students have a right to a full and fair hearing in suspension cases. The cases involved lengthy suspensions and should not be construed to mean that suspensions **without** a hearing can not be used temporarily in order to restore and maintain order after a disruption.

A. Goss vs. Lopez

1. Due Process clause of 14th Amendment is applied to temporary suspension from public school.

2. Requirements

   (a) Notice of charges — best if given before suspension.

   (b) If student denies charges then an explanation of the charges should be given.

   (c) The student should be allowed to give his side of the issue prior to any action being taken against him.

3. Does not require

   (a) That student be allowed to have legal counsel

   (b) That the student be allowed to confront and cross examine witnesses against him.

(c) Can't call other witnesses in his defense.

B. Summary

1. School rules must further the "lawful mission" of the school.

2. In ruling on the lawfulness of school rules a court will look to:

    (a) Basic fair play — rule suspending student for a first minor violation is not fair.

    (b) Does it discriminate without reason

        (i) race, religion or politics

        (ii) sex

    (c) Are constitutionally protected rights violated

        (i) due process

        (ii) first amendment freedom of speech

    (d) Is it reasonable.

    (e) Can the student understand it.

    (f) Is enforcement fair **and** equal.

FREE SPEECH LAW

I. The First Amendment

A. "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

II. Introduction

The first amendment protects the free expression of ideas. It contains the guarantee that the government, be it federal, state, or local, will not infringe upon the individual citizen's right to freedom of expression. However, this right is not an absolute right and it may be limited by laws necessary to safeguard the valid interests of society. As with all laws, a weighing process must occur whereby the cherished constitutional rights of the individual are balanced with the legitimate public interests which the government was created to protect. On the one hand, a citizen does not have a constitutional right to yell "fire" in a crowded theatre; while on the other hand, the government does not have the right to place unreasonable restrictions on citizens' speech.

The United States Supreme Court has set up certain tests in its opinions defining what conduct is protected by the first amendment from government interference. As articulated in **Thomas v. Collins,**

> The case confronts us again with the duty our system places on this Court to say where the individual's freedom ends and the State's power begins. Choice on that border, now as always delicate, is perhaps more so where the usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment.
>
> For these reasons any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger.

Part III of these materials is an outline of the major areas of free speech case law which presents many of the tests which the courts have pronounced in reaching case by case decisions as to what governmental limitations upon the free expression of ideas are constitutionally permissible.

Stated generally, the courts balance the **nature and content** of the oral, written or symbolic utterance itself with the likely consequences which the making of that utterance will cause: (1) if the nature and content of the utterance is extremely dangerous, it is not necessary to prove that the making of the utterance is likely to cause immediate and dangerous consequences in order for an appropriately narrow governmental limitation to be constitutionally valid; (2) if the nature and content of the utterance is not so dangerous, it must be proven that the making of the utterance is likely to cause immediate and dangerous consequences in order for an appropriately narrow governmental limitation to be constitutionally valid.

III. Free Speech Case History:

A. Clear and Present Danger Test

1. Were the words used in the specific situation and under the set of factual cir-

cumstances presented of such a nature as to create a clear and present danger that they would bring about the substantive evils that Congress or the state legislature has a right to prevent. The question is one of proximity and degree.

Schenck v. United States. Schenck was convicted of violating the Espionage Act of 1917 by mailing circulars to young men urging them to oppose the draft laws. The Court held that when a nation is at war many things that might be said in time of peace are such a hinderance to its efforts that their utterance will not be endured so long as men fight.

B. Doctrine of Prior Restraint

1. Laws cannot place a prior restraint on freedom of speech or press. **Near v. Minnesota.** Fear of a "chilling effect" on first amendment rights.

C. Symbolic Speech

1. Symbolic speech includes draft card burning. However, such action is illegal even though within the first amendment's protection because there is a federal interest in maintaining an army and the regulation requiring possession at all times of one's draft card is one aspect of maintaining an army. **United States v. O'Brien.** (Draft law note: nonetheless, a person can not have his deferment revoked because he burned his draft card.)

2. Wearing of black arm bands to school by students held to be symbolic speech protected by the first amendment. The school had suspended students for wearing black armbands in a silent and non-disruptive protest against American involvement in Viet Nam. The court held that in order to restrict such conduct, school officials would have to show that there was reason to believe the conduct would "materially and substantially interfere with the requirements of appropriate discipline in the operation of the school." **Tinker v. Des Moines School District.**

D. Balancing Test

1. In deciding whether language is protected under the first amendment or not, balance the right of the expression of opinions against the danger that the words might imminently threaten immediate interference with the lawful purposes of the law.

2. Stated more concisely, the test is: in each case the courts must ask whether the gravity of the evil discounted by its improbability, justifies an invasion of free speech necessary to avoid danger. **Dennis v. United States.**

3. Thus, if a statement presents an extremely serious threat to society, it is not necessary to show that the words are likely to provoke immediate and dangerous results in order to limit the speech. However, on the other hand, if a statement itself is not an extremely serious threat to society, it must be shown that there is a strong likelihood of an immediate and dangerous result before it can be limited.

4. In 1969 an anti-war demonstrator said, "If they ever make me carry a rifle the first man I want to get in my sights is L.B.J." He was arrested and convicted of threatening the life of the President. The United States Supreme Court held that since factually there was no real threat of physical harm, the conviction must be reversed as a violation of the demonstrator's right of free speech.

E. Freedom of Expression and Association vs. National Security and Loyalty

1. Conspiring to knowingly or willfully advocate, abet, advise or teach the overthrow of the U.S. government. **Dennis v. United States.**

2. Advocating the **doctrine** of overthrow of the government versus advocating the **act** of overthrowing the government. The audience must be urged to do something now or in the future as opposed to merely being urged to believe in something. **Yates v. United States.**

3. In order to support a conspiracy charge there must be a specific intent to do those acts which were illegal. Dr. Benjamin Spock was found not guilty of conspiring to counsel, aid, and abet selective service registrants to refuse to carry their draft cards. **United States v. Spock.**

4. Threats must be distinguished from what is constitutionally protected speech. Speech may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials. **Watts v. United States.**

F. Loyalty Oaths

1. In order for rules requiring loyalty oaths to be signed as a prerequisite to employment (teacher, union member, doctor, etc.) to be constitutional, they must be narrowly drawn and apply only to an individual's membership which is accompanied by the specific intent to further the illegal aims of the organization.

   Many loyalty oath provisions have been held to be unconstitutionally vague and unconstitutional infringements on the right of freedom of association.

   The issue in connection with government jobs, such as in a defense facility, is where to draw the line.

2. SNCC issued a statement in opposition to the United States' position in South Vietnam and Georgia legislator Julian Bond publicly endorsed the statement. He then took the oath of his office saying that he would support the federal and state constitutions. The Georgia house of representatives voted not to allow Bond to be seated. The Court held Bond's right of free expression had been violated. **Bond v. Floyd.**

3. A school teacher refused to answer questions propounded to him by a senate subcommittee regarding his Communist affiliations. A New York statute said that whenever a city employee refused to answer questions on 5th amendment grounds, he would be dismissed if the questions relate to his "official conduct." The Court held that the teacher's summary dismissal was a denial of Due Process. **Slochower v. Board of Higher Education.**

4. An Arkansas statute requiring that each teacher turn in an affidavit annually listing every organization to which he had belonged for the last five years was held violative of the first amendment as many organizational relationships would have no bearing on the teacher's job competence. **Shelton v. Tucker.**

G. Self-incrimination and Freedom of Speech

1. A public employee may be dismissed from his job for refusing on the grounds of the

fifth amendment to answer questions dealing with the performance of his official duties but such statements cannot be used against him in a criminal prosecution. **Garrity v. New Jersey.**

H. Sound Amplification Devices, Unwilling Listeners, Etc.

1. A statute giving the local police chief totally discretionary authority to allow the use of a loudspeaker or not was unconstitutional. **Saia v. New York.** However, an ordinance prohibiting the use of **any and all** vehicles with sound amplifiers emitting "loud and raucous" noises was held to be constitutional. **Kovacs v. Cooper.** Generally, the rule is that an ordinance does not violate the first amendment by prohibiting sound amplification devices if the prohibition is reasonable (i.e., a certain volume, in certain places, during certain times of the day).

I. Offensive Speakers, Hostile Audiences and Related Problems

1. "Fighting words" are not protected by the first amendment. Speech is protected unless there is a clear and present danger of serious substantive evil that rises far above public inconvenience, annoyance, or unrest.

2. A breach of the peace statute which prohibitied speech which "stirs the public to anger, invites dispute, or brings about a condition of unrest" was held to be unconstitutional. The court stated that one of the functions of free speech is to invite dispute. **Terminello v. Chicago.** Terminello made an anti-Semitic speech which caused a near riot but nonetheless the Court found no clear and present danger.

3. A state can punish or prohibit speech if riots, disorder or interference with traffic upon a public street will occur. However, the police must **first** make all reasonable efforts to protect a lawful public speaker (including arresting those who try to impede him). See **Feiner v. New York.**

4. In this area of breach of the peace the question is whether disorder and violence are imminent **and** sufficient police protection is not available. Public hostility to what a speaker has to say does not alone preclude his speaking.

J. Permits for Parades and Distribution of Literature

1. Parades, demonstrations and sit-ins are protected under the first amendment. They can, however, be regulated under appropriate narrowly drawn state law.

2. An ordinance denying the distribution of any literature without first obtaining written permission of the City Manager was declared unconstitutional because the scope of its prohibition was not necessarily related to any legitimate governmental interest. **Lovell v. Griffin.**

3. The practice of allowing local officials unfettered discretion in the regulation of the use of the streets for peaceful parades and meetings is an unwarranted abridgement of freedom of speech and assembly. **Cox v. Louisiana.**

4. Law requiring a permit for a parade which provided that a permit would be granted unless the public welfare, peace, safety, health, decency, good order, morals and/or convenience required that it be refused was held unconstitutional as violative of plaintiff's first amendment right of free speech. **That right applies to parades as well as spoken words. Shuttlesworth v. City of Birmingham.**

K. Picketing, Demonstrations and Sit-Ins.

1. Picketing is a form of speech "plus" which is considered within the scope of the first amendment. Thus, peaceful picketing is protected. However, picketing accompanied by violence or used to achieve an unlawful objective is not protected.

2. Union picketing which was held to be mainly coercive in violation of a state policy of letting employees decide on their own whether to organize or not was property enjoined. **International Brotherhood of Teamsters v. Vogt, Inc.**

3. Orderly demonstrations held in areas where the public is normally permitted to assemble are protected by the first amendment. However, all demonstrations are not permitted in all public places. Thus demonstrations may be disallowed (without violating the demonstrators' first amendment rights) in order to preserve the security of public places, preserve access in to and out of public places and prevent interruptions of normal, everyday uses of public places.

4. The conviction of college students who protested the arrest of some of their classmates by standing and sitting on the jail driveway and thereby blocking traffic on the driveway did not violate their first amendment rights. **Adderley v. Florida.**

5. Demonstrators who gathered at a county courthouse and were arrested for violating a state statute prohibiting activities which obstruct public business or prevent ingress and egress to public buildings did not suffer a violation of their first amendment rights. **Cameron v. Johnson.**

6. The government may not prohibit demonstrations (assemblies) in advance without showing that there will be a real danger to the community if the demonstration occurs. Accordingly, demonstrators have a right to notice and a hearing before their demonstration is prohibited unless very unusual circumstances are shown.

L. Printed Speech and the First Amendment: Libel. (Freedom of Expression vs. Protection Against Damage to Reputation and Invasion of Privacy.)

1. Libel is **not** protected by the first amendment. However, debate on public issues is to remain uninhibited and wide-open to the greatest extent possible.

2. Since erroneous statements are inevitable in free debate, the sole fact of falsity is not determinative. Rather, the test of **New York Times v. Sullivan** is whether the statement was made with actual malice, that is, with knowledge that it was false or with reckless disregard of whether it was false or not. If the statement falls within this test, it is not protected as free speech and libel damages may be awarded. Part of the rationale behind the test is that **calculated** falsehoods are of slight social value and should not be protected.

3. Criticism of public officials while engaged in public business and of the conduct of public business generally is protected as free speech. The question then becomes who is a public official. See **New York Times v. Sullivan,** which involved a public official.

4. In cases of speech concerning private persons the question is whether such person is a public figure and whether the subject matter involved is publicly newsworthy.

5. A high school teacher was fired for writing a letter to a local newspaper which was

critical of the handling of financial matters in the school district. Some of the statements in the letter were erroneous. He was fired and sued for re-instatement. The court ordered his re-instatement holding that absent proof of false statements knowingly or recklessly made by him, a teacher's exercise of his right to speak on issues of public importance may not furnish the basis for his dismissal. **Pickering v. Board of Education.**

6. For test regarding the situation where an individual feels his right to privacy has been violated see **Time, Inc. v Hill.** Was the Hill family kidnapping publicly newsworthy and therefore not an invasion of the individual's right to privacy?

7. Where the situation involves statements by an EMPLOYEE about his EMPLOYER, the employee's speech may be subject to limitations if he is in a confidential position requiring a special degree of loyalty. However, where no special confidential relationship exists, a public employee does not forfeit his right to the protection of the first amendment because of his employment. (See 5. above.)

M. Printed Speech and the First Amendment: Obscenity.

1. **REMEMBER:** Obscenity is not within the first amendment's protection of speech and press. This means that if material is found to be obscene, the first amendment does not apply. It is not a matter of balancing individual freedom of speech or press against a compelling state interest. The clear and present danger test is not relevant. In obscenity cases, the court's job is to classify works as obscene or not, not to weigh constitutional freedoms and powers.

2. The Supreme Court has determined that it is impossible to arrive at an absolute definition of what is obscene because of the variety of attitudes which exist from community to community. Accordingly, the Supreme Court has said that each community through its courts may determine whether particular material is obscene in that community. As such, what may be considered obscene in a small mid-western community could very likely be sold on the streets of New York without interference from law enforcement officers. Such a sliding scale allows different communities to determine what is obscene and as such, more closely control the printing of offensive material in their geographical area.

3. Where obscene materials are possessed for personal, private use and not for sale to the public, they are protected by the first amendment and the owner may not be prosecuted for possessing them. **Stanley v. Georgia.**

IV. Important Supreme Court Cases Involving Free Speech Issues (This part contains statements about several Supreme Court free speech decisions which may be worthy of closer discussion in the classroom.)

A. "The Pentagon Papers" case. **New York Times Co. v. United States,** 403 U.S. 713 (1972).

1. The United States sought to enjoin the New York Times and the Washington Post from publishing what has been commonly referred to as the Pentagon Papers. THE COURT DENIED THE GOVERNMENT'S REQUEST during a special session in the summer of 1972.

2. The government basically argued that the Executive Department should have the authority to protect the nation from publication of information the disclosure of which would endanger the national security. It argued that the President and his

executive department have this power via the foreign affairs power and via the commander-in-chief power.

3. Mr. Justice Douglas said that there have already been several stays in the case, and this in itself had already created a prior restraint that flouts the holding in **Near v. Minnesota.**

4. Mr. Justice Black repeated the traditional view of the first amendment — the necessity for open debate and discussion of vital public issues.

5. Chief Justice Burger wanted the case remanded while the temporary stays remained in effect so that the case could be decided in a quiet, reflective manner.

6. Mr. Justice Harlan argued for the same remedy, saying that "I cannot believe that the doctrine (of prior restraints) reaches to the point of preventing courts from maintaining the status quo long enough to act responsibly in matters of such national importance as those involved here." He argued that many issues were presented, argued briefly, and decided (or not decided) too quickly.

7. Generally, the case held that there is a heavy presumption against the Constitutional validity of any system of prior restraints on expression which comes before the Supreme Court. The government in this case did not meet the burden of proof required to overcome this presumption.

8. Possible discussion questions: What is meant by a prior restraint? Is the prior restraint doctrine compatible with the doctrine of clear and present danger? What does the result of this case say about the Court's attitude toward trust in government and disclosure of information?

B. **Brazenburg v. Harris,** 40 U.S.L.W. 5025 (June 27, 1972)

1. The Court held that the first amendment does not protect a newsman from being required to testify before a grand jury as to his knowledge of criminal activity and informants. (Court vote: 5-4, Mr. Justice White, majority opinion).

2. The Court rejected the petitioner's argument that the government should have to show a compelling need before requiring reporters to testify. The Court only said that the grand jury work itself is a compelling need.

3. Mr. Justice Douglas dissented and said that the reporter should have an **absolute** privilege not to appear, absent his own personal involvement in an alleged crime.

4. Mr. Justice Stewart dissented and said that the Court's holding will "undermine the historic independence of the press by attempting to annex the journalistic profession as an investigative arm of the government." He also argued that informants are essential to a vigorous press (the informants in this case were, of course, Ellsberg and Russo).

C. **Grayned v. City of Rockford,** 40 U.S.L.W. 4881 (June 26, 1972)

1. 200 black people, after presenting grievances to principal at West Senior High School, picketed 100 feet from the school building. The evidence was conflicting on whether there was cheering or chanting. 40 were arrested for violating an anti-picketing ordinance and an anti-noise ordinance.

2. The Court held that the anti-picketing ordinance was unconstitutional but that the anti-noise ordinance was valid.

3. **The anti-picketing ordinance** was held unconstitutional on the basis of **City of Chicago v. Mosley,** 40 U.S.L.W. 4877 (June 27, 1972). That case involved a statute which allowed picketing for labor purposes but not otherwise. The Court held that this was a denial of the equal protection clause. However, the Court said that this does not mean that a statute may not be drawn which is "narrowly tailored to ... legitimate objectives." "The crucial question is whether there is an appropriate governmental interest suit ably furthered by the differential treatment."

4. **Grayned** involved a similar Illinois statute which exempted picketing for labor disputes — held unconsitutional on the same equal protection grounds.

5. The Anti-noise statute was held to be valid. The Court held that the statute was neither vague nor overbroad. The statute prohibited making any noise or diversion from public grounds or private grounds adjacent to school which disturbs or tends to disturb the peace or good order of a school session.

6. Possible discussion question: in dealing with public schools and the first amendment rights of individual students, teachers, parents, etc., are we dealing with a field where the legitimate public interests in the orderly and efficient running of the schools entitle the government to pass statutes limiting the individual's first amendment rights to an extent which would not be upheld in other fields?

V. Topics for Discussion.

A. Thomas Jefferson suggested that the "freedom of speech" clause in the first amendment should read: "The people shall not be deprived or abridged of their right to speak to write or otherwise to publish anything but false facts affecting injuriously the life, liberty, property, or reputation of others or affecting the peace of the confederacy with foreign nations." Is this a less "absolute" phrasing than the actual First Amendment?

B. Propose and discuss what the effects would probably be of one of the following as a replacement to the first amendment as far as the law in the high school in which you are teaching is concerned.

1. Students will never speak unless spoken to.
2. Only teachers will speak during classroom hours.
3. Any student who swears in the school building will be expelled.
4. Students may say anything at any time.
5. Talk about drugs, sex, religion, and politics will not be allowed.
6. Girls will not speak to boys unless spoken to.

C. Which of the following activities should be protected under the free speech guarantee of the first amendment? Which should not be protected?

1. **Yelling fire in a crowded movie theater.** Such speech is not protected because there is no value in the speech itself and the likelihood of harmful consequences is high. In determining what is and what is not speech protected under the clear and present danger test of the first amendment, one must balance the value of the speech to the individual or society in general with the probability of harmful consequences to the public safety if the speech is uttered.

2. **A speech such as H. Rap Brown's "Burn, Baby, Burn" speech in Baltimore several years ago.** Even if a speech provides a chance of protest or riot, is the threat grave enough to say the speech cannot be made? Where is the line between riots as crime and riots as a form of social protest which should be protected as free speech? To what extent should speakers who threaten to stir things up be protected by police? When can police quiet the situation by ordering a speaker to stop talking?

3. **Vietnam protests.** Doesn't existence of free speech depend upon not expressing your ideas violently? Indeed, wasn't the guarantee of free speech made so as to help keep down the level of violent hostility? Is there such a thing as too much protesting? If so, where do you draw the line?

D. **Censorship.** Who should be the censors of television programs, movies, and books and magazines? Possible Teaching Techniques in this area include the following.

1. Discuss the movie ratings, G, PG, R, and X. Ask class if they feel these ratings are necessary or fair.

2. Ask class if they feel there should be more or less censorship. Discuss the findings of the Commission on Obscenity and Pornography. Ask students to find out what their parents' views are on this subject.

3. Ask a student in your class if he would like to be a censor. Ask if he would trust you or the student seated next to him to censor what television programs or movies he could watch or what books he could read.

4. Discuss the Douglas-Black position that the words "no law" in the first amendment mean "no law" (i.e., **absolute** freedom of speech and press). If we don't accept this position, who decides what is not protected and how is this decision made?